79-1904

Supreme Court, U. S.
FILED
JUN 2 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. A-949

KENAI PENINSULA BOROUGH,
Petitioner

v.

STATE OF ALASKA,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS, NINTH CIRCUIT

CHARLES K. CRANSTON
CRANSTON, WALTERS, DAHL
& JARRELL
310 K Street
Anchorage, Alaska 99501

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
I. Reference To The Official And Unofficial Reports Of The Opinions Delivered In The Courts Below:	1
II. The Grounds On Which The Jurisdiction Of This Court Is Invoked:	2
III. Questions Presented For Review.	2
IV. Citations To The "Statute" Involved In This Case (The Complete Text Of The Statutes Appears In Appendix D).	3
V. Statement Of The Case Containing The Facts Material To The Consideration Of The Questions Presented.	3
a. Nature Of The Case, And Course Of Proceedings In The Courts Below.	3
b. Statement Of Facts Relevant To The Issues Presented For Review.	5
c. Basis For Initial Federal Jurisdiction.	6
VI. Statement Of Reasons Relied On For This Petition.	7

TABLE OF AUTHORITIES

CASES Page

Egan v. *City of Aurora, Ill.*, 365 U.S. 514 (1969).. 10
Kenai Peninsula Borough v. *Alaska*, 611 F.2d 1210 (9th Cir. 1980) 1, 9
Kenai Peninsula Borough v. *Andrus*, 436 F. Supp. 288 (D. Alaska 1977) 1
Sears Roebuck & Co. v. *U.S.*, 504 F.2d 1400 (1974) 9
U.S. v. *An Article of Drug*, 394 U.S. 784 (1969).. 10

STATUTES

16 U.S.C. § 715s 2, 3, 4, 5, 6, 7, 8, 9, 10
28 U.S.C. § 1254(1) 2
28 U.S.C. § 1331 6
30 U.S.C. § 181 ..... 2, 3, 4, 5, 6, 7
30 U.S.C. § 191 3

OTHER AUTHORITIES

Comptroller General Decision B-118678, 55 Comp. Gen. 117 6
Executive Order 8979, 6 Fed. Reg. 6471 3

RULES

Supreme Court Rule 19(b) 7

APPENDICES

1. *Kenai Peninsula Borough* v. *Andrus*, 436 F. Supp. 288 (D. Alaska 1977) A-1
2. *Kenai Peninsula Borough* v. *Alaska*, 611 F.2d 1210 (9th Cir. 1980) B-1
3. Judgment, Court of Appeals of the Ninth Circuit C-1
4. Text 16. U.S.C. § 715s D-1
5. Text 30. U.S.C. § 181, 191 ..... D-10

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. A-949

KENAI PENINSULA BOROUGH,
Petitioner

v.

STATE OF ALASKA,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS, NINTH CIRCUIT

Petitioner, Kenai Peninsula Borough, plaintiff-appellant below, petitions this court for a WRIT OF CERTIORARI directed to the United States Court of Appeals for the Ninth Circuit. In support of its petition, petitioner alleges:

I.

Reference To The Official And Unofficial Reports Of The Opinions Delivered In The Courts Below:

1. *Kenai Peninsula Borough* v. *Andrus*, 436 F. Supp. 288 (D. Alaska 1977). A copy of that opinion is appended to this petition as Appendix A.

2. *Kenai Peninsula Borough* v. *Alaska*, 611 F. 2d 1210 (9th Cir. 1980). A copy of that opinion is appended to this petition as Appendix B. A copy of the judgment of the Court of Appeals is appended to this petition as Appendix C.

II.

The Grounds On Which The Jurisdiction Of This Court Is Invoked:

1. The judgment of the United States Court of Appeals for the Ninth Circuit was entered February 5, 1980.

2. There has been no order respecting a re-hearing; an order dated May 7, 1980 granted an extension of time to and including June 2, 1980 within which to petition for certiorari.

3. This court has jurisdiction to review the judgment entered by the United States Court of Appeals for the Ninth Circuit under 28 U.S.C. § 1254(1).

III.

Questions Presented For Review.

1. Did the United States Court of Appeals for the Ninth Circuit commit error by affirming the judgment of the United States District Court for the District of Alaska, which judgment ordered that all revenue derived from federal oil and gas leases located within the Kenai National Moose Range, Alaska be distributed to the United States and State of Alaska pursuant to 30 U.S.C. § 181 et seq., the Mineral Leasing Act?

2. Did the United States Court of Appeals for the Ninth Circuit commit error in affirming the judgment of the United States District Court for the District of Alaska, which judgment declared that subsequent to its amendment in 1964, the distribution of revenue from federal oil and gas leases located within the Kenai National Moose Range, Alaska was not governed by the Act of June 15, 1935, as amended, (Wildlife Refuge Revenue Sharing Act), 16 U.S.C. § 715s, but rather by 30 U.S.C. § 181 et seq., the Mineral Leasing Act?

IV.

Citations To The "Statute" Involved In This Case (The Complete Text Of The Statutes Appears In Appendix D).

1. 30 U.S.C. § 181, 191 found at pages 6-7 and 55-56, respectively Title 30 United States Code annotated and at page 18 of the 1980 Supplement thereto (1976 amendments to Section 191).

2. 16 U.S.C. § 715s found at pages 463-465 30 United States Code annotated, and at pages 106-108 of the 1980 Supplement thereto (1974 and 1978 amendments).

V.

Statement Of The Case Containing The Facts Material To The Consideration Of The Questions Presented.

a. ***Nature Of The Case, And Course Of Proceedings In The Courts Below.***

This case involves separate suits by the Kenai Peninsula Borough, an Alaska county type municipal corporation, (hereinafter called "Borough") and the State of Alaska (hereinafter called "State") for declaratory relief and writs of mandate (R-1-25).[1] The Borough sought a declaratory judgment that revenue from federal oil and gas leases located within the Kenai National Moose Range, Alaska[2] be distributed pursuant to 16 U.S.C.

---

[1] References to the record are to the record filed in the Court of Appeals of the Ninth Circuit.

[2] The Kenai National Moose Range is part of the National Wildlife Refuge System and is located wholly within the Kenai Peninsula Borough. It was established on December 16, 1941, Executive Order 8979, 6 Fed. Reg. 6471 (R. 906). That order withdrew and reserved approximately 2 million acres of primarily public land for "use as a refuge and breeding ground for moose."

§ 715s (R. 14-25). Under that section the Borough would receive twenty-five percent (25%) of such net revenue; the remaining seventy-five percent (75%) would be paid to the United States Treasury to be expended for the management of the National Wildlife Refuge System.

The State sought a declaratory judgment that revenue from federal oil and gas leases located within the Kenai National Moose Range, Alaska be distributed pursuant to 30 U.S.C. § 181, et seq., the Mineral Leasing Act (R. 1-9). Under that Act ninety percent (90%) of the revenue would be distributed to the State and ten percent (10%) to the United States. Both the Borough and the State sought Writs of Mandate compelling the appropriate federal officials to distribute the revenue in a manner consistent with their respective claims.

In each suit the Secretary of the Interior sought a judgment declaring that the proceeds of federal oil and gas leases situated on the Kenai National Moose Range be distributed pursuant to 16 U.S.C. § 715s (R. 294).

The separate actions brought by the State and the Borough were consolidated on August 12, 1976 (R. 27-28). After consolidation and on December 10, 1976 the Kenai Peninsula Borough intervened in the State suit and sought the same relief demanded in its original suit (R. 39-52).

Since there were no genuine issues of material fact, all of the parties, the State, Borough and Federal defendants filed motions for partial summary judgment. All the parties' motions for summary judgment were argued orally before the United States District Court on July 7, 1977. Thereafter, that court granted the State's motion for partial summary judgment and denied the motions by the Borough and the United States. Judgment was entered on its order on October 10, 1977.

By its terms the District Court judgment ordered that all revenue derived from all federal oil and gas leases located within the Kenai National Moose Range, Alaska be distributed to the United States and State of Alaska under 30 U.S.C. § 181, et seq.

Both the Borough and the Federal defendants appealed from the judgment of the District Court. By its decision filed February 5, 1980, a copy of which is appended hereto in Appendix B, the United States Court of Appeals, for the Ninth Circuit, affirmed the decision of the District Court for the District of Alaska.

b. *Statement Of Facts Relevant To The Issues Presented For Review.*

The genesis of this dispute is Congress' enactment on August 30, 1964 of Public Law 88-523, 78 Stat. 701-702. That Statute was a complete revision of 16 U.S.C. § 715s, the Wildlife Refuge Revenue Sharing Act. As first enacted on June 15, 1935, 49 Stat. 383, the Wildlife Refuge Revenue Sharing Act distributed twenty-five percent (25%) of the net revenue from Wildlife Refuges to the county in which the refuge was located. The United States retained the remaining proceeds. However, proceeds from the sale of minerals were not specified for distribution to counties by the statute as initially enacted. The 1964 amendment added the word "mineral" to the list of resources the revenue from which was to be distributed to counties under the act. In addition the 1964 amendment to 16 U.S.C. § 715s specifically requires that twenty-five percent (25%) of the net revenue from reserved public land in the Wildlife Refuge System (including of course minerals) be distributed to the county in which the refuge is located.[3] Seventy-five per-

---

[3] Before the 1964 amendment to 16 U.S.C. § 715s, mineral receipts from reserved land wildlife refuges were distributed to pursuant to 31 U.S.C. § 181 et. seq., the Mineral Leasing

cent (75%) of the revenue is to be paid to the Fish & Wildlife fund.

Because of the inconsistency between the revenue distribution provisions of 16 U.S.C. § 715s as amended, on one hand, and the earlier enacted provisions of 31 U.S.C. § 181 et seq., on the other, the Director of the Fish & Wildlife Service sought an opinion from the Solicitor of the Department of the Interior as to what statute governed the distribution of revenue from oil and gas leases on reserved land Wildlife Refuges including, necessarily, the Kenai National Moose Range (R. 179). The Solicitor concluded that 16 U.S.C. § 715s as amended in 1964 governed the distribution of that revenue (R. 179). The Comptroller General concurred in the Solicitor's opinion, Decision B-118678 of July 29, 1975, 55 Comp. Gen. 117 (R. 185). In response to a request by the State of Alaska for reconsideration (R. 190), the Solicitor affirmed his earlier decision on July 11, 1976 (R. 211). In order to compel distribution of revenue derived from federal oil and gas leases situated on the Kenai National Moose Range in accordance with the opinions of the Solicitor of the Department of the Interior and the Comptroller General noted above, the Kenai Peninsula Borough filed suit on May 14, 1976 (R. 14).

c. *Basis For Initial Federal Jurisdiction.*

The basis for federal jurisdiction in the first instance was 28 U.S.C. § 1331, federal question jurisdiction.

Act. The Kenai National Moose Range is a reserved land wildlife refuge. Revenue from the Kenai National Moose Range was accordingly distributed in the manner required by the Mineral Leasing Act (R. 66-67; 299-230).

VI.

Statement Of Reasons Relied On For This Petition.

This petition for Writ of Certiorari should be granted pursuant to Supreme Court Rule 19(b). Both the District Court and the Court of Appeals for the Ninth Circuit have decided an important question of federal law which has not been, but should be settled by the Supreme Court, Supreme Court Rule 19(b)(1).

There is an irreconcilable conflict between the provisions of 16 U.S.C. § 715s, as amended in 1964, the Wildlife Refuge Revenue Sharing Act, and the earlier enacted provisions of 31 U.S.C. § 181 et seq., the Mineral Leasing Act. The Mineral Leasing Act would require ninety percent (90%) of the oil and gas revenues from federal oil and gas leases located on the Kenai National Moose Range to be distributed to Alaska and ten percent (10%) thereof to the United States. On the other hand, the Wildlife Refuge Revenue Sharing Act requires twenty-five percent (25%) of those revenues to be distributed to those counties which the Wildlife Refuge is located and seventy-five percent (75%) thereof to the United States Fish and Wildlife Fund. The conflict should be resolved by this court.

There are at least three reasons why this question is of significant importance. First, and most readily apparent, there are significant amounts of revenue at stake. During the period from 1966 to 1976 the total revenue from federal leases on the Kenai National Moose Range was over Fifty Seven Million Dollars (R. 949). Since 1976 additional millions of dollars are being held in a suspense account (R. 231, 1133). Accordingly, the effect of this litigation on all parties is substantial. Moreover, the result as to each party is widely different depending on the statute applied. For example, the Kenai Peninsula Borough can receive either nothing or up to approxi-

mately 12 million dollars, depending on the outcome. Likewise the Fish & Wildlife Fund can receive either nothing or up to 48 million dollars.

A second reason why this question should be resolved by this court is based on the fact that Wildlife Refuges other than the Kenai National Moose Range will be affected by the outcome of this suit. In Alaska alone there are at least ten other National Wildlife Refuges, some of which will have significant mineral revenue potential.[4] Because of the national need to develop energy sources, and because most of those presently undeveloped sources lie within Alaska, the conclusion is inescapable that other wildlife refuges will be affected. For example, the Arctic National Wildlife Refuge abuts the Arctic Ocean and is immediately adjacent to the highly productive Prudhoe Bay oilfields. The question presented by this litigation is not an isolated one but can and will occur frequently in the future.

Third, apart from the need to resolve the irreconcilable conflict between the two statutes involved, this suit raises important questions of statutory interpretation. The necessity for resolving these questions is demonstrated by the fact that each Court below decided this case upon what the Borough considers to be erroneous theories of statutory interpretation.[5] This court should

---

[4] Arctic National Wildlife Refuge; Yukon National Wildlife Refuge; Chamisso National Wildlife Refuge, Clarence Rhode National Wildlife Refuge; Nunivak National Wildlife Refuge; Nelson Island National Wildlife Refuge; Kodiak Island National Wildlife Refuge; Aleutian Island National Wildlife Refuge; Yukon Delta National Wildlife Refuge; Koyukuk National Wildlife Refuge.

[5] The District Court recognized that the wording of 16 U.S.C. § 715s would support a liberal construction of the word "minerals". Nevertheless that court concluded that despite the literal requirements of the Statute, it did not

clarify the law relating to the principles of statutory interpretation involved. Specifically even though each court below recognized that the applicable provisions of 16 U.S.C. § 715s has had a plain unambiguous meaning,[6] each court resorted to legislative history to achieve a meaning contrary to that plain meaning. Each Court concluded such an interpretation was necessary because Congress could not have contemplated the result obtained by the literal reading of the statute. The principle involved was correctly applied by the U.S. Court of Customs and Patent Appeals in *Sears, Roebuck & Co.* v. *U.S.*, 504 F. 2d 1400 (1974) where the court said:

> "If Congress had made a choice of language which fairly brings a given situation within a statute, it is unimportant that the particular application may not have been contemplated by the legislators (504 F. 2d at P. 1402)."

On the other hand, the Court of Appeals in this case said:

> "Since a literal reading of § 715s creates apparently unanticipated and non-productive difficulties with other statutes and the legislative history of the statute does not resolve the issue, it is nearly impossible to determine with confidence what was Congress' intent in passing the 1964 amendments." (612 F. 2d. 1210, 1213-1214 [1980]).

With respect to the interpretation of a statute whose meaning is clear on its face, but which has been interpreted by the courts below in a manner contrary to its

---

require distribution of mineral receipts from reserved land and wildlife refuges in accordance with its terms, 136 F. Sup., 288, 291, (R. 1070). The Court of Appeals agreed, 611 F. 2d 1210, 1213 (1980).

[6] The plain meaning of the statute requires distribution of twenty-five percent (25%) of reserved land wildlife refuge receipts to the count, in which the refuge is located.

plain meaning, it is necessary that this Court establish the principles governing the statute's application.

In conclusion, this case raises important questions of federal law both with respect to issues of importance in the administration of the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, cf. *U.S.* v. *An Article of Drug et. al.*, 394 U.S. 784 (1969) and with respect to matters of statutory interpretation, cf. *Egan* v. *City of Aurora, Ill.*, 365 U.S. 514 (1961).

On the basis of the foregoing it is respectfully requested that the Court issue a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit in this suit.

Respectfully submitted this 2nd day of June, 1980.

CRANSTON, WALTERS, DAHL & JARRELL
Attorneys for Kenai Peninsula Borough

By: Charles Cranston
CHARLES CRANSTON

Appendices

APPENDIX A

UNITED STATES DISTRICT COURT

D. ALASKA

Civ. Nos. A76-94 & J76-3

KENAI PENINSULA BOROUGH,
Plaintiff,

v.

CECIL D. ANDRUS,
Defendant.

STATE OF ALASKA,
Plaintiff,

v.

CECIL D. ANDRUS, *et al.*,
Defendants.

Aug. 17, 1977

Charles K. Cranston, Gallagher, Cranston & Snow, Anchorage, Alaska, for Kenai Borough.

Avrum Gross, Atty. Gen., State of Alaska by Frederick Boness, Asst. Atty. Gen., Juneau, Alaska, for plaintiff.

G. Kent Edwards, U.S. Atty., Anchorage, Alaska, for defendant.

MEMORANDUM AND ORDER

VON DER HEYDT, Chief Judge.

THIS CAUSE comes before the court on cross motions for summary judgment. The precise issue before the court is whether the distribution of revenues from mineral leases within the Kenai National Moose Range

is governed by the Mineral Leasing Act, 30 U.S.C. § 191, or 16 U.S.C. § 715s.

The Kenai National Moose Range was created by the reservation of land in the public domain.[1] From statehood until the events leading to this lawsuit the State of Alaska received mineral leasing revenues from the Kenai National Moose Range, pursuant to 30 U.S.C. § 191. Under that statute the State received 90% of the lease revenues, with the remaining 10% accruing to the United States as miscellaneous receipts. On July 29, 1975, the Comptroller General issued an opinion stating that mineral leasing receipts from wildlife refuges created by reservation, as well as receipts from wildlife refuges created by acquisition, were governed by the distribution scheme of 16 U.S.C. § 715s. The Comptroller General determined that 16 U.S.C. § 715s, as amended in 1964, required distribution of 25% of the net receipts from mineral leases on reserved refuges to the counties in which the refuge was located, with the remaining 75% distributed to the wildlife refuge fund. The State of Alaska objected to the Comptroller General's opinion, and upon reconsideration the original position was affirmed by the Comptroller General in an opinion issued on June 11, 1976.

On May 14, 1976, Kenai Peninsula Borough, the borough in which Kenai National Moose Range is located, filed suit against the Secretary of Interior seeking distribution of mineral leasing receipts in conformity with 16 U.S.C. § 715s. On July 8, 1976, the State of Alaska filed suit against the United States seeking distribution as provided by 30 U.S.C. § 191. The actions

---

[1] In general, reserved lands are lands which were never in state or private ownership while acquired lands are those granted or sold to the United States by a state or citizen. *Wallis* v. *Pan American Pet. Corp.*, 384 U.S. 63, 65 n.2, 86 S.Ct. 1301, 16 L.Ed.2d 369 (1966).

puted, and the controversy is purely one of statutory interpretation.

Before proceeding with the disposition of the motions it is necessary to outline the interplay of the statutes involved in this suit. As noted above, the Mineral Leasing Act of 1920, 30 U.S.C. §§ 181, 191, requires the United States to distribute 90% of mineral leasing receipts from public domain lands to the states. *Wallis* v. *Pan American Petroleum Corp.*, 384 U.S. 63, 65 n. 2, 86 S.Ct. 1301, 16 L.Ed.2d 369 (1966). Revenues from mineral leases on acquired lands of the United States are distributed under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-359, which requires mineral lease receipts to

> "be paid into the same funds or accounts in the Treasury and . . . distributed in the same manner as prescribed for other receipts from the lands affected by the lease." 30 U.S.C. § 355.

Prior to the 1964 amendment, 16 U.S.C. § 715s, at least as interpreted by the State of Alaska and the Comptroller General, did not apply to mineral lease receipts on reserved public lands.[2] However, all non-mineral activity receipts from refuges were distributed under 16 U.S.C. § 715s. In summary, prior to 1964, receipts from

---

[2] Prior to 1964, 16 U.S.C. § 715s(a) provided that 25% of money received by the United States "from the sale or other disposition of surplus wildlife, or sale of timber, hay, grass, or other spontaneous products of the soil, shell, sand, or gavel, and from other privileges on refuges established under the Migratory Bird Conservation Act of February 18, 1929, or under any other law, proclamation, or Executive order, . . . shall be paid at the end of such year by the Secretary of the Treasury to the county or counties in which such refuge is situated, . . ."

activities on wildlife refuges were distributed in the following manner:

1. All non-mineral activity receipts were distributed 25% to the counties and 75% to a federal wildlife refuge fund;

2. Mineral leasing receipts from reserved lands were distributed 90% to the State of Alaska and 10% to a federal fund for miscellaneous receipts;

3. Mineral leasing receipts from acquired lands were distributed like refuge receipts from non-mineral activity —25% to the counties and 75% to the wildlife refuge fund.

In 1964, 16 U.S.C. § 715s(a) was amended to read:

> Beginning with the next full fiscal year and for each fiscal year thereafter, all revenues received by the Secretary of the Interior from the sale or other disposition of animals, timber, hay, grass, or other products of the soil, *minerals*, shells, sand, or gravel, from other privileges, or from leases for public accommodations or facilities incidental to but not in conflict with the basic purposes for which those areas of the National Wildlife Refuge System were established, during each fiscal year in connection with the operation and management of those areas of the National Wildlife Refuge System that are solely or primarily administered by him, through the United States Fish and Wildlife Service, shall be covered into the United States Treasury and be reserved in a separate fund for disposition as hereafter prescribed. (emphasis added).

At the same time, the distribution scheme was changed to differentiate between receipts from reserved lands and receipts from acquired lands. 16 U.S.C. §§ 715s(c)(1) and 715s(c)(2). The position of the United States and

Kenai Peninsula Borough is that 16 U.S.C. §§ 715s(a), 714s(c)(i), as amended, requires that 25% of the mineral leasing receipts from reserved lands be distributed to Kenai Peninsula Borough. In contrast, the State of Alaska would have this court interpret the word "minerals" restrictively to apply only to acquired lands so that mineral leasing receipts from a wildlife reserve created by withdrawal of land from the public domain would be distributed 90% to the State of Alaska and 10% to the miscellaneous fund.

The Kenai Peninsula Borough argues that prior to 1964 16 U.S.C. § 715s governed the distribution of mineral leasing receipts from public land. Specifically, Kenai Peninsula Borough argues that the language "other privileges" was intended to include mineral leasing receipts from reserved and acquired land. This interpretation ignores the fact that mineral leasing receipts from reserved land within wildlife refuges generated prior to 1964 were in fact distributed under 30 U.S.C. § 191. Moreover, it ignores the fact that the government continues to adhere to its construction of 16 U.S.C. § 715s as it read prior to amendment.[3] Such a long-standing, contemporaneous, and practical interpretation by the executive officers charged with administration of a statute is strong evidence of the meaning of a statute. *Fleming* v. *Mohawk Co.*, 331 U.S. 111, 116, 67 S.Ct. 1129, 91 L.Ed. 1375 (1947). *See generally*, Sutherland, Statutory

---

[3] On June 11, 1976, the Comptroller General held: "The Attorney General states, and we agree, that prior to the 1964 amendment, oil and gas lease revenues were not included in the coverage of 16 U.S.C. § 715s and that to the extent the counties benefited from oil and gas lease revenues from wildlife refuges prior to 1964, it was only with respect to acquired lands, by virtue of 30 U.S.C. § 355, supra." Comptroller General B-118678, at 3 (June 11, 1976). See also Comptroller General B-118678, at 1-2 (June 11, 1976).

Construction § 49.03, at 233 (4th ed. 1972). The borough cites obscure, often ambiguous evidence of a contrary administrative interpretation. The ambiguous material is consistent with the State of Alaska's position, and to the extent that the evidence contradicts the state's interpretation it pales in the face of the actual fact of distribution. Neither the legislative history nor the policy of management of the refuges requires a different result.

Rejection of Kenai Peninsula Borough's interpretation of 16 U.S.C. § 715s(a) as it read prior to the 1964 amendment, of course, is only the beginning of the inquiry. The primary issue is whether 16 U.S.C. § 715s (a), as amended in 1964, should be construed literally or restrictively. The general rule of statutory construction is that there is no occasion for construction where the language is clear and unambiguous and does not lead to absurd or impracticable results. *Caminetti* v. *United States*, 242 U.S. 470, 485, 37 S.Ct. 192, 61 L.Ed. 442 (1917). *See generally* Sutherland, Statutory Construction, § 46.01, at 48 (4th ed. 1972). In determining whether a statutory term is clear and unambiguous, the court generally looks to the Act itself to make a prima facie determination. *See Foley Bros.* v. *Filardo*, 336 U.S. 281, 284, 69 S.Ct. 575, 93 L.Ed. 680 (1949). *See generally* Sutherland, Statutory Construction, § 46.05, at 55-56 (4th ed. 1972). In the case at bar, there is nothing in 16 U.S.C. § 715s which would support a restrictive construction of the word "minerals". Thus, a literal approach to statutory construction would dictate an expansive definition including both reserved and acquired lands.

However, there are limits to literalism. All statutes must be interpreted in light of their statutory purpose, and a literal reading which would be contrary to the legislative purpose is to be avoided if the statute can be read in a manner consistent with the words and pur-

pose. *Haggar Co.* v. *Helvering*, 308 U.S. 389, 394, 60 S.Ct. 337, 84 L.Ed. 340 (1940). *See generally* Sutherland, Statutory Construction § 46.07, at 65 (4th ed. 1972). Where a literal interpretation would result in applications beyond the purpose for which the statute was enacted, courts construe the language restrictively in order to give effect to the spirit of the statute. *See generally* Sutherland, Statutory Construction, §§ 54.04, at 358, 54.06, at 368, 46.07, at 66 (4th ed. 1972).

The primary purpose of the 1964 amendment of 16 U.S.C. § 715s was undoubtedly to facilitate the acquisition of waterfowl habitat areas. The Secretary of the Interior was authorized to acquire such land, but only if the governor of the state in which the land was located approved the acquisition. The governors generally refused to approve acquisitions because when land was acquired it was withdrawn from the tax rolls. Local communities were deprived of property tax revenues and would not benefit from the 25% distribution scheme if the land was not producing revenue. Consequently, the distribution scheme for acquired wildlife refuge land, 16 U.S.C. § 715s(c) had to be amended to facilitate acquisition. H.R.Rep.No. 1753, 88th Cong., 2d Sess. 1 (1964); S.Rep.No. 1096, 88th Cong., 2d Sess. 2 (1964), U.S. Code Cong. & Admin.News 1964, p. 3265.

While the purpose of amending 16 U.S.C. § 715s(c) is clear, there is little evidence of the purpose behind adding "minerals" to the product list of 16 U.S.C. § 715s(a). If the court accepts Kenai's view this silence is surprising given the substantial reallocation of revenues which would result if the amendment did effect distributions from reserved lands. If the addition of "minerals" was intended to alter the distribution, one would expect mention of this fact in discussions which focused on 16 U.S.C. § 715s(a), and one would expect vigorous objection from the states. Cf. H.R. Rep.No. 1753, 88th Cong., 2d Sess. 77 (1964), U.S. Code Cong. & Admin.News

1964, p. 3265. More equitable Payments to Counties Having Wildlife Refuges: Hearings on S. 179, S. 1363, S. 1720, and S. 2498 Before Committee on Commerce, 88th Cong., 2d Sess. 77 (1964). Of course, "the search for significance in the silence of Congress is too often the pursuit of a mirage." *Scripps-Howard Radio* v. *Comm'n*, 316 U.S. 4, 11, 62 S.Ct. 875, 880, 86 L.Ed. 1229 (1942). The State of Alaska's restrictive reading, however, is supported by more than the mere silence of Congress. First, if Congress had intended to change the distribution scheme for mineral leasing revenues from reserved lands, the estimated payments to counties after the 1964 amendment would have substantially increased over past payments. However, no increase in payments to Kenai Peninsula Borough was projected in the cost estimate considered by Congress. The 1963 payments from Kenai wildlife refuge receipts were $1,768. The estimated payments in 1963, assuming the 1964 amendment had been in force in 1963, were identical. H.R.Rep. No. 1793, 88th Cong., 2d Sess. 3 (1964); S.Rep.No. 1096, 88th Cong., 2d Sess. 13 (1964).

These estimated distributions were estimates for both acquired and reserved lands. This is evident from the inclusion of payments from the Kenai wildlife refuge in the projections. There is also explicit recognition of this fact in footnote 3 to the cost estimate.

Secondly, Congressional intent is evident in the Congressional expectation that the wildlife refuge fund would decrease if the 1964 amendment was adopted. H.R. Rep.No. 1753, 88th Cong., 2d Sess. 12 (1964). If mineral leasing receipts from public lands were intended to be distributed in conformity with 16 U.S.C. 715s(c)(1), the wildlife refuge fund would have been substantially increased, and not reduced, as 75% of the mineral leasing receipts from reserved lands would have been reallocated to the wildlife refuge fund. Finally, it should be observed that the administrative agency charged with

distribution of the fund distributed mineral lease revenues from public land for more than ten years after amendment as provided by 30 U.S.C. § 191. Only recently has the Secretary taken a contrary position.

Thus, this court concludes that the word "minerals" as used in the 1964 amendment of 16 U.S.C. § 715s(a) must be read restrictively rather than literally. The 1964 amendment of 16 U.S.C. § 715s(a) was not intended to amend 30 U.S.C. § 191 to require distribution of mineral leasing receipts from reserved land in accordance with 16 U.S.C. § 715s(c). To hold otherwise would require an application of literalism in violation of the apparent Congressional purpose. The interpretation adopted does not make "minerals" superfluous as 16 U.S.C. § 715s does continue to govern the distribution of mineral lease receipts from acquired land. Cf. Sutherland, Statutory Construction § 46.06, at 63 (4th ed. 1972). Moreover, this construction is consistent with the rule of construction disfavoring implied amendments. Sutherland, Statutory Construction § 22.13, at 139 (4th ed. 1972).[4]

Accordingly, IT IS ORDERED:

1. THAT the State of Alaska's motion for partial summary judgment is granted;

2. THAT the cross-motions for summary judgment filed by Kenai Peninsula Borough and the United States are denied.

DATED at Anchorage, Alaska, this 17th day of August, 1977.

---

[4] Because of this result the court is not required to determine: Whether section 317 of the Federal Land Policy and Management Act, in amending the Mineral Leasing Act of 1920, impliedly amended the 1964 amendment to 16 U.S.C. § 715s. Nor does the court need determine whether the 1964 amendment to 16 U.S.C. § 715s constitutes a breach of compact between the State and the United States.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 77-3265

Civil No. A-76-94

KENAI PENINSULA BOROUGH, a municipal corporation,
Plaintiff-Cross-Complainant-Appellant,

vs.

STATE OF ALASKA,
Plaintiff-Appellee

and

CECIL D. ANDRUS, Secretary of the Interior, *et al.*,
Defendant-Appellee.

No. 78-1443

Civil No. J-76-3

KENAI PENINSULA BOROUGH, a municipal corporation,
Plaintiff-Cross-Complainant-Appellee,

vs.

STATE OF ALASKA,
Plaintiff,

and

CECIL D. ANDRUS, Secretary of the Interior, *et al.*,
Defendant-Appellant

OPINION

Appeal from the United States District Court
for the District of Alaska

Before: CHAMBERS and TANG, Circuit Judges, and THOMPSON,* District Judge

TANG, Circuit Judge.

These consolidated actions were brought to determine the proper distribution of revenues from federal oil and gas leases on reserved public lands within the Kenai National Moose Range, Alaska, a part of the National Wildlife Refuge System. Appellants herein, Kenai Peninsula Borough (Kenai) and the Secretary of the Interior, Secretary of the Treasury, and the Comptroller General (federal defendants) seek distribution pursuant to the Act of June 15, 1935, as amended, 16 U.S.C. § 715s (1976)[1] (Wildlife Refuge Revenue Sharing Act). The State of Alaska (Alaska) seeks distribution pursuant to the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 191. The district court, in a decision reported at 436 F.Supp. 288 (D. Alas. 1977), granted summary judgment in favor of Alaska.

We affirm.

FACTUAL AND STATUTORY BACKGROUND

The opinion of the district court should be consulted for a more detailed rendering of the legislative back-

---

* Honorable Bruce R. Thompson, United States District Judge for the District of Nevada, sitting by designation.

[1] References to § 715s are to the section as it existed in 1976. In 1978, the section was amended in several respects. The substance of these changes has no impact on the issue in this case; but some of the paragraphing of the section has been altered. *But see* footnote 6 *infra*.

ground. A brief account will suffice here. The Kenai National Moose Range was created in 1941 by the reservation of land in the public domain.[2] The Mineral Leasing Act is the statute governing mineral leases on reserved public lands generally. Under the Act, from 1957 and 1958 until the events leading to this lawsuit, Alaska received 90% of the net revenues from oil and gas leases in the Kenai Range, while the remaining 10% accrued to the U.S. Treasury. 30 U.S.C. § 191.[3]

The Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s governs the distribution of revenues only from lands in the National Wildlife Refuge System. It provides that revenues from refuge lands go into a separate fund, and that these revenues then be divided between the local county in which the land is situated (25%) and the Wildlife Refuge Fund (75%). Prior to 1964, the distribution schemes of the Mineral Leasing Act and the Wildlife Refuge Revenue Sharing Act were not in conflict because the list of revenue sources in the Wildlife Refuge Revenue Sharing Act did *not* include the sale or other disposition of *minerals* on the refuge lands.

Amendments in 1964, however, made significant alterations in the distribution scheme of 16 U.S.C. § 715s(c)

---

[2] Reserved public domain lands are public domain lands, never in state or private ownership, which have been set apart and reserved for a specific purpose. Public lands set apart for wildlife refuges are often described simply as reserved lands. Land in the Wildlife Refuge System may also be acquired. Acquired lands are those granted or sold to the United States by a state or citizen.

[3] The Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-359, governs the distribution of revenues from oil and gas leases on acquired lands. It provides that lease revenues "be distributed in the same manner as prescribed for other receipts from the land affected by the lease." *Id.* § 355. Thus, for mineral leases on acquired lands there is no conflict with the Wildlife Refuge Revenue Sharing Act.

and added the word "minerals" to the list of revenue sources in 16 U.S.C. § 715s(a). Although the addition of "minerals" to the Wildlife Refuge Revenue Sharing Act created a *prima facie* conflict between the allocation schemes of the two acts for mineral revenues on reserved refuge land, the legislative history of the amendments shows no awareness of the significance of the change. The legislative history is concerned exclusively with the proposed alterations within the distribution scheme of the Wildlife Refuge Revenue Sharing Act. Moreover, the Interior Department, which is charged with the administration of these provisions, over the years since 1964 until 1975 gave no studied attention to the conflict and continued to distribute the Kenai Refuge oil and gas lease revenues to Alaska according to the Mineral Leasing Act.

In 1975, in response to a request by the Director of the Fish and Wildlife Service, the Solicitor of the Interior Department issued an opinion that the 1964 addition of "minerals" to the Wildlife Refuge Revenue Sharing Act should control the distribution of oil and gas revenues on reserved refuge land, superseding the contrary provisions of the Mineral Leasing Act. The Comptroller General concurred in this conclusion. 55 Comp. Gen. 117. After objection by Alaska and reconsideration by the Solicitor and the Comptroller General, the Comptroller reaffirmed the original conclusion. Thereafter these lawsuits were initiated. All federal distribution of Kenai Moose Range oil and gas revenues ceased at the end of 1976, pending the outcome of this litigation.

ISSUES

Upon appeal, on behalf of Kenai and the federal defendants, it is argued that the addition of the term "minerals" to the list of revenue sources in 16 U.S.C. § 715s(a) and the scheme of distribution contemplated in 16 U.S.C. § 715s(c) are of clear enough application that,

in the absence of an expression of contrary meaning in the legislative history, the statute should be construed literally. If the amended version of § 715s is construed literally, it conflicts with the Mineral Leasing Act. And both because it is the later of two conflicting statutes and because it is the more specific of a specific and a general statute, the Wildlife Refuge Revenue Sharing Act should control the distribution of these oil and gas revenues. The appellant also argues that the Interior Department and the Comptroller General 1975 opinions interpreting the statutes are entitled to deference.

Alaska, on the other hand, argues that "minerals" in the Wildlife Refuge Revenue Sharing Act should be read restrictively so that the term applies only to mineral revenues on acquired refuge lands and not to those from reserve refuge lands. Alaska cites certain incidents in the legislative history of the 1964 amendments and claims they show that Congress did not intend that the addition of "minerals" would alter prior law. Alaska also urges (1) that the appellants' literal interpretation is contrary to the Interior Department's interpretation in practice from 1964 to 1975 when revenues were distributed according to the Mineral Leasing Act; (2) that in 1976 Congress reenacted the Alaska distribution section of the Mineral Leasing Act, without modification or comment, after 11 years of agency interpretation and at a time when clarification of the statute would otherwise have been sought, thereby showing congressional intent that the Mineral Leasing Act cover *all* reserved land; and (3) that a literal construction here causes potential interpretive difficulties with other statutes, chiefly the Alaska Statehood Act, Pub. L. No. 85-508, 72 Stat. 339, 48 U.S.C. Note preceding § 21, and the Alaska Native Claims Settlement Act of 1971, 43 U.S.C. § 1608.

DISCUSSION

The difficulty here results from the addition of but one word, the term "minerals," to a catalog list of revenue sources in 16 U.S.C. § 715s(a). The parties agree that this addition creates an apparent conflict between the two statutory provisions involved. The touchstone to the resolution of the conflict is to ascertain the intent of Congress: by the addition of the term "minerals" in 16 U.S.C. § 715s(a), what effect, if any, did Congress intend to have on the distribution of mineral revenues on reserved refuge lands under 16 U.S.C. § 715s(c) or 30 U.S.C. § 191?

Appellant Kenai, relying on *Caminetti* v. *United States*, 242 U.S. 470 (1917), argues that 16 U.S.C. § 715s is clear and unambiguous on its face and therefore that resort to legislative history or other extraneous sources is inappropriate. *See also United States* v. *Wilson*, 591 F.2d 546, 547 (9th Cir. 1979); *Adams* v. *Morton*, 581 F.2d 1314, 1320 (9th Cir. 1978), *cert. denied*, 440 U.S. 958 (1979). It is true that under the plain meaning of minerals and of the other provisions of § 715s, its language fairly brings the Kenai Moose Range oil and gas revenues within its scope, if § 715s is read in isolation.

However, when a plain meaning reading of a statute brings that statute into conflict with another statute and disrupts a preexisting network of statutory provisions, it is appropriate to look to the legislative history for help in ascertaining congressional intent. *See Train* v. *Colorado Public Interest Research Group, Inc.*, 426 U.S. 1, 9-10 (1976); *Church of Scientology* v. *U.S. Department of Justice*, —— F.2d ——, Slip Op. 696, 700-02 (9th Cir. Nov. 8, 1979). *Cf. Trans Alaska Pipeline Rate Cases*, 436 U.S. 631, 643 (1978); *Commissioner* v. *Brown*, 380 U.S. 563, 571 (1965) (ability of courts to adopt restricted meaning of word when usual meaning leads to

absurd results); *League to Save Lake Tahoe, Inc.* v. *Trounday*, 598 F.2d 1164, 1173 (9th Cir. 1979) (resort to legislative history proper when words of statute are not conclusive as to legislative intent); *Get Oil Out! Inc.* v. *Exxon Corp.*, 586 F.2d 726, 729 (9th Cir. 1978) (court obligated to construe federal statutes so that they are consistent with each other). This is especially true when the face of the statute gives no indication of a congressional intent to repeal existing legislation or of a purpose, the accomplishment of which might require superseding prior statutes.

Unfortunately, the legislative history of the 1964 amendments to 16 U.S.C. § 715s sheds no direct light on the issue here. The principal purpose of the 1964 amendments was to improve the distribution scheme for revenues from acquired refuge land, so that local authorities would more likely approve of federal acquisition of wildlife refuge land. *See* H.R. Rep. No. 1753, 88th Cong., 2d Sess., *reprinted in* [1964] *U.S. Code Cong. & Ad. News* 3265. Accordingly, the addition of "minerals" occurred without comment; and potential conflict with the Mineral Leasing Act went unremarked. Of course, the mere fact that Congress was silent when one would have expected comment does not necessarily mean that an alteration in revenues from mineral leases was not intended by Congress.[4] Similarly, details in other portions of the legislative history from which there can be consistently implied an assumption that the prior revenue distribution would not be altered, are not in themselves dispositive.[5]

---

[4] *Cf. Scripps-Howard Radio, Inc.* v. *Federal Communications Commission*, 316 U.S. 4, 11 (1942) ("The search for significance in the silence of Congress is too often the pursuit of a mirage.").

[5] The district court discusses these incidents. 436 F.Supp. at 292. Alaska also relies on these incidents. However, those

Since a literal reading of § 715s creates apparently unanticipated and non-productive difficulties with other statutes and the legislative history of the statute does not resolve the issue, it is nearly impossible to determine with confidence what was Congress' intent in passing the 1964 amendments.[6]

---

items of legislative history show, at most, only that Congress had no express awareness that the addition of "minerals" might alter prior law. It is too far a jump to conclude further that Congress positively intended no change. *But see* footnote 7 *infra*. These incidents of legislative history in themselves cannot be dispositive of the issue here because they are connected only tenuously to the question of the intended distribution scheme and cannot be read in effect as a statement of congressional intent.

[6] Ideally, in most situations where a statute has a potential for conflict with another prior statute, either the statute itself or the legislative history will contain enough indication of purpose and congressional intent that the matter can be resolved there. In fact, the question of the meaning of "minerals" in § 715s and its application to mineral lease revenues on reserve refuge land was before Congress in 1978. In the course of a major reworking of § 715s, it was proposed to clarify this question so that oil and gas revenues from refuge lands were to be governed by § 715s, and not by 30 U.S.C. § 191, at least from the date of the 1978 enactment. Finally, however, the Senate Committee on Environment and Public Works noted that the issue was currently being determined in the instant case and preferred to leave the statute in its original form, pending the outcome of this litigation. "The Committee believes it is inappropriate to legislate on this matter pending a determination by the court, and takes no position as to whether disposition of mineral revenues should be made pursuant to the Mineral Leasing Act or the Refuge Revenue Sharing Act." S. Rep. No. 95-1174, 95th Cong., 2d Sess. 4, *reprinted in* [1978] *U.S. Code Cong. & Ad. News* 5003, 5006. *See also Id.* at 8, *reprinted in* [1978] *U.S. Code Cong. & Ad. News* at 5009-10 (additional views).

The appellants urge us to find that the later Wildlife Refuge Revenue Sharing Act has repealed by implication the earlier Mineral Leasing Act as to revenues from refuge lands. Repeal by implication, however, is not favored; if possible, statutes should be read so as to give effect to each of them. *Morton* v. *Mancari*, 417 U.S. 535, 549-51 (1974); *Posadas* v. *National City Bank*, 296 U.S. 497, 503 (1936); *United States* v. *Jones*, 607 F.2d 269, 272 (9th Cir. 1979); *United States* v. *Burnett*, 505 F.2d 815, 816 (9th Cir. 1974), *cert. denied*, 420 U.S. 966 (1975). This is the preferred course especially when, as here, the purpose and legislative history of the later act gives no clear foundation for an implied repeal.[7] There can be no implied repeal unless the intention of the legislative body to repeal is clear. *Morton* v. *Mancari*, *supra*; *United States* v. *Georgia-Pacific Co.*, 421 F.2d 92, 102 (9th Cir. 1970). If possible, we seek an interpretation of the later act which will harmonize it with the Mineral Leasing Act and cause least disruption to the other related statutes.

The stated purpose of the 1964 amendments to the Wildlife Refuge Revenue Sharing Act was to facilitate the acquisition of lands from local owners, with the approval of local governing authorities. The focus of attention, therefore, was the treatment under the Act of *acquired* lands. Accordingly, we hold that the 1964 addition of "minerals" to the Wildlife Refuge Revenue Sharing Act must be read to be applied only to acquired refuge lands and not to reserved refuge lands. This interpretation is warranted because to hold otherwise is to find an implied repeal when Congress has expressed no

---

[7] The few items of legislative history which do exist, *see* footnote 5 *supra*, give support to the position that Congress did not clearly intend an implied repeal. But even without them, such intent would still be absent.

clear intent. It also harmonizes the operation of the two statutes and gives effect to both. Further, it avoids other potential conflicts with the Alaska Statehood Act and the Alaska Native Claims Settlement Act. This interpretation also draws support from the fact that the department construed the statute this way in practice between 1964 and 1975, which practice we are not wont to disregard as merely eleven years of inadvertent statutory construction by the agency.[8]

Because clear congressional intent to effect a repeal by implication has not been shown and because the interpretation of the two statutes adopted by the district court and by this court gives effect to both statutes, the judgment of the district court is affirmed.

Affirmed.

---

[8] The department did change its interpretation in 1975. *See* page 3 *supra*. The appellants argue that the department's new interpretation is entitled to the customary deference shown to agency interpretations under *Udall* v. *Tallman*, 380 U.S. 1 (1965). They further argue that the most recent departmental interpretation is equally entitled to deference despite the fact that it is a change of position, citing *Andrus* v. *Sierra Club*, 99 S.Ct. 2335 (1979), and *Montana Power Co.* v. *Environmental Protection Agency*, 608 F.2d 334 (9th Cir. 1979). But in *Sierra Club*, the change of interpretation occurred in the context of a comprehensive change from advisory guidelines to mandatory regulations. And in *Montana Power*, the agency's changed interpretation of *its own regulations* was involved. Here we do not have even a change in an agency's regulations implementing a statute. Rather it is a case of the agency's interpretation of a single term in a statute. In this context the term is neither a term of art nor one whose interpretation requires that deference be shown to the expertise of those charged with administering the operation of the statute. *Cf. General Electric Co.* v. *Gilbert*, 429 U.S. 125, 142-43 (1976) (less deference to administrative guidelines when they conflict with earlier agency pronouncements).

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Nos. 77-3265, 78-1443

DC CV A-76-94, J-76-3 JAH

KENAI PENINSULA BOROUGH, Municipal Corp.,
Plaintiff/Cross-Complainant/Aplt.

vs.

STATE OF ALASKA,
Plaintiff/Appellee

vs.

CECIL D. ANDRUS, *Secretary of Interior, et al.,*
Defendant/Appellee

KENAI PENINSULA BOROUGH, Municipal Corp.,
Plaintiff/Cross-Complainant/Aple.

vs.

STATE OF ALASKA,
Plaintiff

vs.

CECIL D. ANDRUS, *Secretary of Interior, et al.,*
Defendants/Appellants

Appeal from the United States District Court
for the District of Alaska

(Anchorage & Juneau)

JUDGMENT

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the District of Alaska (Anchorage & Juneau) and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed.

Certified to be a true and correct copy of true copy filed in my office. Dated May 20, 1980

JoAnn Myres
Clerk

By /s/ Colleen Cannon
Deputy

[SEAL]

A True Copy
Attest 13 May 1980
Richard H. Deane
Clerk of Court

By: /s/ Oscar Tagle
Deputy Clerk

Filed and entered February 5, 1980

APPENDIX D

Title 16 United States Code

16 U.S.C. § 715s. Participation of States in revenues from National Wildlife Refuge System—Separate fund in United States Treasury; availability of funds until expended; definition of "National Wildlife Refuge System"

(a) Beginning with the next full fiscal year and for each fiscal year thereafter, all revenues received by the Secretary of the Interior from the sale or other disposition of animals, timber, hay, grass, or other products of the soil, minerals, shells, sand, or gravel, from other privileges, or from leases for public accommodations or facilities incidental to but not in conflict with the basic purposes for which those areas of the National Wildlife Refuge System were established, during each fiscal year in connection with the operation and management of those areas of the National Wildlife Refuge System that are solely or primarily administered by him, through the United States Fish and Wildlife Service, shall be covered into the United States Treasury and be reserved in a separate fund for disposition as hereafter prescribed. Amounts in the fund shall remain available until expended, and may be expended by the Secretary without further appropriation in the manner hereafter prescribed. The National Wildlife Refuge System (hereafter referred to as the "System") includes those lands and waters administered by the Secretary as wildlife refuges, lands acquired or reserved for the protection and conservation of fish and wildlife that are listed pursuant to section 1533 of this title as endangered species or threatened species, wildlife ranges, game ranges, wildlife management areas, and waterfowl production areas established under any law, proclamation, Executive, or public land order.

Deduction of expenses

(b) The Secretary may pay from the fund any necessary expenses incurred by him in connection with the revenue-producing measures set forth in subsection (a) of this section.

Payments to counties

(c) The Secretary, at the end of each fiscal year, shall pay, out of the net receipts in the fund (after payment of necessary expenses) for such fiscal year, which funds shall be expended solely for the benefit of public schools and roads as follows:

(1) to each county in which reserved public lands in an area of the System are situated, an amount equal to 25 per centum of the net receipts collected by the Secretary from such reserved public lands in that particular area of the System: *Provided*, That when any such area is situated in more than one county the distributive share to each county from the aforesaid receipts shall be proportional to its acreage of such public lands therein; and

(2) to each county in which areas in the System are situated that have been acquired in fee by the United States, either (A) three-fourths of 1 per centum of the cost of the areas, exclusive of any improvements to such areas made subsequent to Federal acquisition, such cost to be adjusted to represent current values as determined by the Secretary for the first full fiscal year after enactment of this Act and as redetermined by him at five-year intervals thereafter, or (B) 25 per centum of the net receipts collected by the Secretary from such acquired lands in that particular area of the System within such counties, whichever is greater. The determinations by the Secretary under this subsection shall be accomplished in such manner as he shall

consider to be equitable and in the public interest, and his determinations hereunder shall be final and conclusive.

Limitation on amount; reduction of payments

(d) The payments under subsection (c) of this section to the counties in the United States for any one fiscal year shall not exceed the amount of net receipts in the fund for that fiscal year and, in case the net receipts are insufficient for a particular fiscal year to pay the aggregate amount of the payments for that fiscal year to the counties, the payment to each county shall be reduced proportionately.

Uses for surplus moneys

(e) Any moneys remaining in the fund after all payments are made for any fiscal year may be used by the Secretary thereafter for management of the System, including but not limited to the construction, improvement, repair, and alteration of buildings, roads, and other facilities, and for enforcement of the Migratory Bird Treaty Act, as amended.

Terms, conditions, and regulations for disposition of surplus products, grant of privileges, and execution of other activities resulting in collection of revenues

(f) The disposition or sale of surplus animals, minerals, and other products, the grant of privileges, and the carrying out of any other activities that result in the collection of revenues within any areas of the System may be accomplished upon such terms, conditions, or regulations, including sale in the open markets, as the Secretary shall determine to be in the best interest of the United States. Further, the Secretary may dispose of such surplus animals by exchange of the same or other kinds, gift or loan to public institutions for exhibition

or propagation purposes and for the advancement of knowledge and the dissemination of information relating to the conservation of wildlife in accordance with such regulations as he may prescribe.

Supersedure and repeal of other provisions

(g) Beginning with the first day of the next full fiscal year hereafter, the provisions of this Act shall supersede and repeal the provisions of the paragraph entitled "Management of National Wildlife Refuges" in the General Appropriation Act, 1951, approved September 6, 1950 (64 Stat. 595, 693-694).

June 15, 1935, c. 261, Title IV, § 401, 49 Stat. 383; 1939 Reorg.Plan No. II, § 4(f), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1433; 1940 Reorg.Plan No. III, § 3, eff. June 30, 1940, 5 F.R. 2108, 54 Stat. 1232; Oct. 31, 1951, c. 654, § 2(13), 65 Stat. 707; Aug. 30, 1964, Pub.L. 88-523, 78 Stat. 701; Oct. 15, 1966, Pub.L. 89-669, § 8(b), 80 Stat. 930; Dec. 28, 1973, Pub.L. 93-205, § 13(b), 87 Stat. 902.

16 U.S.C. § 715s (1974 and 1976 amendments). Participation of local government in revenue from areas administered by the United States Fish and Wildlife Service—Separate fund in United States Treasury; availability of funds until expended; definition of "National Wildlife Refuge System"

(a) Beginning with the next full fiscal year and for each fiscal year thereafter, all revenues received by the Secretary of the Interior from the sale or other disposition of animals, salmonoid carcasses, timber, hay, grass, or other products of the soil, minerals, shells, sand, or gravel, from other privileges, or from leases for public accommodations or facilities incidental to but not in conflict with the basic purposes for which those areas of the National Wildlife Refuge System were established,

during each fiscal year in connection with the operation and management of those areas of the National Wildlife Refuge System, National Fish Hatcheries, or other areas, that are solely or primarily administered by him, through the United States Fish and Wildlife Service, shall be covered into the United States Treasury and be reserved in a separate fund for disposition as hereafter prescribed. Amounts in the fund shall remain available until expended, and may be expended by the Secretary without further appropriation in the manner hereafter prescribed. The National Wildlife Refuge System (hereafter referred to as the "System") includes those lands and waters administered by the Secretary as wildlife refuges, lands acquired or reserved for the protection and conservation of fish and wildlife that are listed pursuant to section 1533 of this title as endangered species or threatened species, wildlife ranges, game ranges, wildlife mangement areas, and waterfowl production areas established under any law, proclamation, Executive, or public land order.

Deduction of expenses

(b) The Secretary may pay from the fund any necessary expenses incurred by him in connection with the revenue-producing and revenue-sharing measures of this section.

Payments to counties

(c) (1) The Secretary shall pay out of the fund, for each fiscal year beginning with the fiscal year ending September 30, 1979, to each county in which is situated any fee area whichever of the following amounts is greater:

(A) An amount equal to the product of 75 cents multiplied by the total acreage of that portion of the fee area which is located within such county.

(B) An amount equal to three-fourths of 1 per centum of the fair market value, as determined by the Secretary, of that portion of the fee area (excluding any improvements thereto made after the date of Federal acquisition) which is located within such county.

(C) An amount equal to 25 per centum of the net receipts collected by the Secretary in connection with the operation and management of such fee area during such fiscal year; but if a fee area is located in two or more counties, the amount of each such county is entitled to shall be the amount which bears to such 25 per centum the same ratio as that portion of the fee area acreage which is within such county bears to the total acreage of such fee area.

(2) At the end of each fiscal year the Secretary shall pay out of the fund for such fiscal year to each county in which any reserve area is situated, an amount equal to 25 per centum of the net receipts collected by the Secretary in connection with the operation and management of such area during such fiscal year: *Provided*, That when any such area is situated in more than one county the distributive share to each county from the aforesaid receipts shall be proportional to its acreage of such reserve area.

(3) For purposes of this section, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands shall each be treated as a county.

(4) (A) For purposes of determining the fair market value of fee areas under paragraph (1) (B), the Secretary shall—

(i) appraise before September 30, 1979, all fee areas for which payments under this section were not authorized for fiscal years occurring before October 1, 1977; and

(ii) appraise all other fee areas, within five years after October 17, 1978, in the order in which such areas were first established by the Service.

After initial appraisal under clause (i) or (ii), each fee area shall thereafter be reappraised by the Secretary at least once during each five-year period occurring after the date of the initial appraisal. Until any fee area referred to in clause (ii) is initially appraised under this subparagraph, the fair market value of such area shall be deemed to be that adjusted cost of the area which was used to determine payments under this subsection for fiscal year 1977; and in no case may the amount of any payment to any local government under paragraph (1) (B) with respect to any fee area be less than the amount paid under paragraph (2) (A) of this subsection (as in effect on September 30, 1977) with respect to such area.

(B) The Secretary shall make the determinations required under this subsection in such manner as the Secretary considers to be equitable and in the public interest. All such determinations shall be final and conclusive.

(5) (A) Each county which receives payments under paragraphs (1) and (2) with respect to any fee area or reserve area shall distribute, under guidelines established by the Secretary, such payments on a proportional basis to those units of local government (including, but not limited to, school districts and the county itself in appropriate cases) which have incurred the loss or reduction of real property tax revenues by reason of the existence of such area. In any case in which a unit of local government other than the county acts as the collecting and distributing agency for real property taxes, the payments under paragraphs (1) and (2) shall be made to such other unit which shall distribute the payments in accordance with the guidelines.

(B) The Secretary may prescribe regulations under which payments under this paragraph may be made to units of local government in cases in which subparagraph (A) will not effect the purposes of this paragraph.

(C) Payments received by units of local government under this subsection may be used by such units for any governmental purpose.

Authorization of appropriations equal to difference between amount of net receipts and aggregate amount of required payments

(d) If the net receipts in the fund which are attributable to revenue collections for any fiscal year do not equal the aggregate amount of payments required to be made for such fiscal year under subsection (c) of this section to counties, there are authorized to be appropriated to the fund an amount equal to the difference between the total amount of net receipts and such aggregate amount of payments.

Transfer and use of excess of net receipts over aggregate amount of required payments

(e) If the net receipts in the fund which are attributable to revenue collections for any fiscal year exceed the aggregate amount of payments required to be made for such fiscal year under subsection (c) of this section to counties, the amount of such excess shall be transferred to the Migratory Bird Conservation Fund for use in the acquisition of suitable areas for migratory bird refuges under the provisions of the Migratory Bird Conservation Act.

Terms, conditions and regulations for execution of revenue producing activities; disposal of animals

(f) The Secretary shall carry out any revenue producing activity referred to in subsection (a) (1), (2),

and (3) of this section within any fee area or reserve area subject to such terms, conditions, or regulations, including sales in the open markets, as the Secretary determines to be in the best interest of the United States. The Secretary may, in accordance with such regulations as the Secretary may prescribe, dispose of animals which are surplus as any such area by exchange of the same or other kinds, gift or loan to public institutions for exhibition or propogation purposes, and for the advancement of knowledge and the dissemination of information relating to the conservation of wildlife.

Definitions

(g) As used in this section—

(1) The term "Secretary" means the Secretary of the Interior.

(2) The term "fee area" means any area which was acquired in fee by the United States and is administered, either solely or primarily, by the Secretary through the Service.

(3) The term "reserve area" means any area of land withdrawn from the public domain and administered, either solely or primarily, by the Secretary through the Service.

(4) The term "Service" means the United States Fish and Wildlife Service.

(5) The term "county" means any county, parish, or organized or unorganized borough.

Administration of payments to local governments for entitlement lands; reserved areas as entitlement lands; payments as payments under specified provisions

(h) In administering sections 1601 and 1607 of Title 31, for fiscal years occurring after September 30, 1978—

(1) reserve areas shall be deemed to be entitlement lands for purposes of section 1606(a) of Title 31; and

(2) payments received by any unit of local government pursuant to subsection (c)(2) of this section shall be deemed to be payments under a provision of law specified in section 1604 of Title 31.

As amended Dec. 3, 1974, Pub. L. 93-509, § 4, 88 Stat. 1603; Oct. 17, 1978, Pub. L. 95-469, § 1(a), 92 Stat. 1319.

Title 30 United States Code

30 U.S.C. § 181. Lands subject to disposition; persons entitled to benefits; reciprocal privileges; helium rights reserved

Deposits of coal, phosphate, sodium, potassium, oil, oil shale, native asphalt, solid and semisolid bitumen, and bituminous rock (including oil-impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried) or gas, and lands containing such deposits owned by the United States, including those in national forests, but excluding lands acquired under the Appalachian Forest Act, and those in incorporated cities, towns, and villages and in national parks and monuments, those acquired under other Acts subsequent to February 25, 1920, and lands within the naval petroleum and oil-shale reserves, except as hereinafter provided, shall be subject to disposition in the form and manner provided by this chapter to citizens of the United States, or to associations of such citizens, or to any corporation organized under the laws of the United States, or of any State or Territory thereof, or in the case of coal, oil, oil shale, or gas, to municipalities. Citizens of another country, the laws, customs, or regulations of which deny similar or like privileges to citizens or corporations of this country, shall not by stock ownership, stock holding, or stock control, own

any interest in any lease acquired under the provisions of this chapter.

The United States reserves the ownership of and the right to extract helium from all gas produced from lands leased or otherwise granted under the provisions of this chapter, under such rules and regulations as shall be prescribed by the Secretary of the Interior: *Provided further*, That in the extraction of helium from gas produced from such lands it shall be so extracted as to cause no substantial delay in the delivery of gas produced from the well to the purchaser thereof.

Feb. 25, 1920, c. 85, § 1, 41 Stat. 437; Feb. 7, 1927, c. 66, § 5, 44 Stat. 1058; Aug. 8, 1946, c. 916, § 1, 60 Stat. 950; Sept. 2, 1960, Pub. L. 86-705, § 7(a), 74 Stat. 790.

30 U.S.C. § 191. Disposition of moneys received

All money received from sales, bonuses, royalties, and rentals of public lands under the provisions of this chapter shall be paid into the Treasury of the United States; 37½ per centum thereof shall be paid by the Secretary of the Treasury as soon as practicable after December 31 and June 30 of each year to the State within the boundaries of which the leased lands or deposits are or were located; said moneys to be used by such State or subdivisions thereof for the construction and maintenance of public roads or for the support of public schools or other public educational institutions, as the legislature of the State may direct; and, excepting those from Alaska, 52½ per centum thereof shall be paid into, reserved and appropriated, as a part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902, and of those from Alaska 52½ per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof: *Provided*, That all moneys which may accrue to the United States under the provisions of this chapter from lands within the naval petroleum reserves shall be de-

posited in the Treasury as "miscellaneous receipts", as provided by the Act of June 4, 1920 (41 Stat. 813), as amended June 30, 1938 (52 Stat. 1252). All moneys received under the provisions of this chapter not otherwise disposed of by this section shall be credited to miscellaneous receipts.

Feb. 25, 1920, c. 85, § 35, 41 Stat. 450; May 27, 1947, c. 83, 61 Stat. 119; Aug. 3, 1950, c. 527, 64 Stat. 402; July 10, 1957, Pub. L. 85-88, § 2, 71 Stat. 282; July 7, 1958, Pub. L. 85-508, §§ 6(k), 28(b), 72 Stat. 343, 351.

30 U.S.C. § 191. Disposition of moneys received (1976 Amendments)

All money received from sales, bonuses, royalties, and rentals of the public lands under the provisions of this chapter and the Geothermal Steam Act of 1970, notwithstanding the provisions of section 20 thereof, shall be paid into the Treasury of the United States; 50 per centum thereof shall be paid by the Secretary of the Treasury as soon as practicable after March 31 and September 30 of each year to the State other than Alaska within the boundaries of which the leased lands or deposits are or were located; said moneys paid to any of such States on or after January 1, 1976, to be used by such State and its subdivisions, as the legislature of the State may direct giving priority to those subdivisions of the State socially or economically impacted by development of minerals leased under this chapter, for (i) planning, (ii) construction and maintenance of public facilities, and (iii) provision of public service; and excepting those from Alaska, 40 per centum thereof shall be paid into, reserved, appropriated, as part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902, and of those from Alaska as soon as practicable after March 31 and September 30 of each year, 90 per centum there-

of shall be paid to the State of Alaska for disposition by the legislature thereof; *Provided*, That all moneys which may accrue to the United States under the provisions of this chapter and the Geothermal Steam Act of 1970 from lands within the naval petroleum reserves shall be deposited in the Treasury as "miscellaneous receipts", as provided by the Act of June 4, 1920 (41 Stat. 813), as amended June 30, 1938 (52 Stat. 1252). All moneys received under the provisions of this chapter and the Geothermal Steam Act of 1970 not otherwise disposed of by this section shall be credited to miscellaneous receipts.

As amended Apr. 21, 1976, Pub. L. 94-273, § 6(2), 90 Stat. 377; Aug. 4, 1976, Pub. L. 94-377, § 9, 90 Stat. 1090; Sept. 28, 1976, Pub. L. 94-422, Title III, § 301, 90 Stat. 1323; Oct. 21, 1976, Pub. L. 94-579, Title III, § 317(a), 90 Stat. 2770.

No. A-949

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

KENAI PENINSULA BOROUGH,
Petitioner,

v.

STATE OF ALASKA,
Respondent.

REPLY OF KENAI PENINSULA BOROUGH TO ALASKA'S OPPOSITION TO PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

CHARLES K. CRANSTON
CRANSTON, WALTERS & DAHL
310 K Street
Anchorage, Alaska 99501
(907) 276-1994

Attorneys for
Kenai Peninsula Borough

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
STATUTES	ii
1. Legislative History	1
2. Rules of Statutory Construction	2
3. Alaska Native Claims Settlement Act	3
4. Compact Under the Statehood Act	4

TABLE OF AUTHORITIES

CASES

	Page
Caminetti v. *U.S.*, 242 U.S. 470 (1917)	2
Dixon v. *U.S.*, 381 U.S. 68, 74 (1965)	3
Enfield v. *Kleppe*, 566 F. 2d 1139, 1142 (10th Cir. 1977)	3
Houghton v. *Payne*, 194 U.S. 88, 99-100 (1904)	3
U.S. v. *Clarke*, 100 S. Ct. 1127 (1980)	2
Udall v. *Tallman*, 380 U.S. 1 (1965)	3

STATUTES

16 USC § 715s	1, 2, 3, 4
30 USC § 191	2
43 USC § 1608(d)	2, 3
43 USC § 1608(g)	3
Mineral Leasing Act, 30 USC § 191	2, 4
Alaska Native Claims Settlement Act, Section 9(d), 43 USC § 1608(d)	2, 3
Alaska Statehood Act § 28(b) (72 Stat. 339)	2

APPENDICES

1. 16 U.S.C. § 715s	A-1
2. 30 U.S.C. § 181	B-1
3. 30 U.S.C. § 191	C-1
4. 43 U.S.C. § 1608(d)	D-1
5. 43 U.S.C. § 1608(g)	E-1

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. A-949

KENAI PENINSULA BOROUGH,
Petitioner,

v.

STATE OF ALASKA,
Respondent.

REPLY OF KENAI PENINSULA BOROUGH TO ALASKA'S OPPOSITION TO PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY TO OPPOSITION

Pursuant to Supreme Court Rule 24(4) the Kenai Peninsula Borough replies as follows to points raised in Alaska's opposition to the petitions for writ of certiorari. This reply pertains to matters not otherwise covered in the petition of the Kenai Peninsula Borough.

1. Legislative History.

Alaska claims that if this petition is granted an exhaustive review of the 1964 amendment to 16 USC § 715s will be required (Alaska Brief page 11). Alaska is in error. There is no ambiguity in 16 USC § 715s as amended in 1964. The statute unambiguously requires that 25% percent of the net proceeds from the sale of minerals from a wildlife refuge will be distributed to the county [borough] in which the refuge is located. Given the clarity of the language, the statute should be inter-

preted by application of the "plain meaning" rule, *Caminetti* v. *U.S.*, 242 U.S. 470 (1917). The Caminetti rule still applies today, *U.S.* v. *Clarke*, 100 S. Ct. 1127 (1980). Moreover, if the legislative history of the 1964 amendment to 16 USC § 715s is reviewed, nothing will be found to contradict the application of the "plain meaning" rule and nothing will be found to support the decision of the courts below.

2. Rules of Statutory Construction.

The State argues that the specific terms of other statutes require distribution of Kenai National Moose Range Revenues pursuant to the Mineral Leasing Act, 30 USC § 191. Specifically Alaska relies on Section 9(d), of the Alaska Native Claims Settlement Act, 43 USC § 1608(d) and the Alaska Statehood Act. Again the State is in error.

Section 9(d) of the Alaska Native Claims Settlement Act reads in part:

> "All bonuses, rentals, and royalties received by the United States after the date of enactment of this act from the distribution by it of such minerals in public lands in Alaska shall be distributed as provided in the Alaska Statehood Act . . ."

The Alaska Statehood Act does not require distribution of all receipts by the United States for mineral lands under 30 USC § 191. The Statehood Act only requires that if any mineral distribution is governed by the Mineral Leasing Act, the State will receive 90% of the revenues therefrom rather than 37½% as was the case of other states at the time of its enactment, Alaska Statehood Act § 28(b) (72 Stat. 339). Mineral distribution's from the Kenai National Moose Range are not governed by the Mineral Leasing Act.

Alaska's reliance on Section 317(a) of the Federal Land Policy and Management Act of 1976 (90 Stat. 2770) is misplaced. As in the case of the Alaska State-

hood Act the Land Policy Act merely requires that where the Mineral Leasing Act applies, Alaska will receive 90% of the mineral revenues rather than the increased amount of 50% in the case of other states. The Land Policy Act does not purport to establish a rule of allocation of revenues derived from the mineral receipts of wildlife refuges.

Lastly Alaska incorrectly relies on the doctrine of contemporaneous construction, *Udall* v. *Tallman*, 380 U.S. 1 (1965). In making this argument Alaska disregards the rule that an administrative official cannot by regulation or other interpretation alter an express statutory mandate, *Houghton* v. *Payne*, 194 U.S. 88, 99-100 (1904). Such a faulty interpretation by an administrator is a nullity *Dixon* v. *U.S.*, 381 U.S. 68, 74 (1965). This rule applies even where the faulty interpretation has prevailed over a period of years, *Enfield* v. *Kleppe*, 566 F. 2d 1139, 1142 (10th Cir. 1977). Thus, whatever errors the Secretary of Interior may have made in his administration of 16 USC § 715s prior to this litigation, those errors cannot establish a precedent in light of the clear statutory language to the contrary.

3. Alaska Native Claims Settlement Act.

Alaska argues that Section 9(d) of the Alaska Native Claims Settlement Act of 1971, 43 USC § 1608(d) requires that 2% of the gross mineral proceeds from public lands in Alaska is to be paid to the Alaska Native Fund. There will be no impact on the Alaska Native Fund if the Kenai Peninsula Borough prevails in this litigation. The funds subject to this petition involve revenues only from 1976 to the present date, not from 1972 to this date as the State argues. Moreover, no matter what the result may be in subsequent phases of this litigation if the petition is granted, the Alaska Native Fund will still receive the $500,000,000.00 maximum to which it is entitled, 43 USC § 1608(g).

Lastly, if in view of Alaska's argument, there is a serious question as to the severity of the impact of this litigation on the Alaska Native Fund, that is one additional reason why the petition should be granted. This Court should have the opportunity to review the merits, if indeed there are any, of the State's argument on this point.

4. Compact Under the Statehood Act.

Alaska argues that if the distribution of revenue from the Kenai National Moose Range is made pursuant to 16 USC § 715s, the compact between Alaska and the United States as set forth in the Alaska Statehood Act would be violated. The simple answer to that argument is that, as we have previously shown, the Alaska Statehood Act does not require that all mineral revenues be distributed pursuant to the Mineral Leasing Act, 30 USC § 191. It must follow that any argument that a compact between the United States and the State of Alaska has been violated is without merit.

We have shown that none of Alaska's reasons for denial of the Petition for Writ of Certiorari are valid. For that reason, as well as for the reasons stated in the petitions, those petitions should be granted.

Respectfully submitted this 28th day of August, 1980.

CHARLES K. CRANSTON
CRANSTON, WALTERS & DAHL
310 K Street
Anchorage, Alaska 99501
(907) 276-1994

Attorneys for
Kenai Peninsula Borough

Appendices

APPENDIX A

Title 16 United States Code

16 U.S.C. § 715s. Participation of States in revenues from National Wildlife Refuge System—Separate fund in United States Treasury; availability of funds until expended; definition of "National Wildlife Refuge System"

(a) Beginning with the next full fiscal year and for each fiscal year thereafter, all revenues received by the Secretary of the Interior from the sale or other disposition of animals, timber, hay, grass, or other products of the soil, minerals, shells, sand, or gravel, from other privileges, or from leases for public accommodations or facilities incidental to but not in conflict with the basic purposes for which those areas of the National Wildlife Refuge System were established, during each fiscal year in connection with the operation and management of those areas of the National Wildlife Refuge System that are solely or primarily administered by him, through the United States Fish and Wildlife Service, shall be covered into the United States Treasury and be reserved in a separate fund for disposition as hereafter prescribed. Amounts in the fund shall remain available until expended, and may be expended by the Secretary without further appropriation in the manner hereafter prescribed. The National Wildlife Refuge System (hereafter referred to as the "System") includes those lands and waters administered by the Secretary as wildlife refuges, lands acquired or reserved for the protection and conservation of fish and wildlife that are listed pursuant to section 1533 of this title as endangered species or threatened species, wildlife ranges, game ranges, wildlife management areas, and waterfowl production areas established under any law, proclamation, Executive, or public land order.

Deduction of expenses

(b) The Secretary may pay from the fund any necessary expenses incurred by him in connection with the revenue-producing measures set forth in subsection (a) of this section.

Payments to counties

(c) The Secretary, at the end of each fiscal year, shall pay, out of the net receipts in the fund (after payment of necessary expenses) for such fiscal year, which funds shall be expended solely for the benefit of public schools and roads as follows:

(1) to each county in which reserved public lands in an area of the System are situated, an amount equal to 25 per centum of the net receipts collected by the Secretary from such reserved public lands in that particular area of the System: *Provided*, That when any such area is situated in more than one county the distributive share to each county from the aforesaid receipts shall be proportional to its acreage of such public lands therein; and

(2) to each county in which areas in the System are situated that have been acquired in fee by the United States, either (A) three-fourths of 1 per cenutum of the cost of the areas, exclusive of any improvements to such areas made subsequent to Federal acquisition, such cost to be adjusted to represent current values as determined by the Secretary for the first full fiscal year after enactment of this Act and as redetermined by him at five-year intervals thereafter, or (B) 25 per centum of the net receipts collected by the Secretary from such acquired lands in that particular area of the System within such counties, whichever is greater. The determinations by the Secretary under this subsection shall be accomplished in such manner as he shall

consider to be equitable and in the public interest, and his determinations hereunder shall be final and conclusive.

Limitation on amount; reduction of payments

(d) The payments under subsection (c) of this section to the counties in the United States for any one fiscal year shall not exceed the amount of net receipts in the fund for that fiscal year and, in case the net receipts are insufficient for a particular fiscal year to pay the aggregate amount of the payments for that fiscal year to the counties, the payment to each county shall be reduced proportionately.

Uses for surplus moneys

(e) Any moneys remaining in the fund after all payments are made for any fiscal year may be used by the Secretary thereafter for management of the System, including but not limited to the construction, improvement, repair, and alteration of buildings, roads, and other facilities, and for enforcement of the Migratory Bird Treaty Act, as amended.

Terms, conditions, and regulations for disposition of surplus products, grant of privileges, and execution of other activities resulting in collection of revenues

(f) The disposition or sale of surplus animals, minerals, and other products, the grant of privileges, and the carrying out of any other activities that result in the collection of revenues within any areas of the System may be accomplished upon such terms, conditions, or regulations, including sale in the open markets, as the Secretary shall determine to be in the best interest of the United States. Further, the Secretary may dispose of such surplus animals by exchange of the same or other kinds, gift or loan to public institutions for exhibition or propagation purposes and for the advancement of

knowledge and the dissemination of information relating to the conservation of wildlife in accordance with such regulations as he may prescribe.

Supersedure and repeal of other provisions

(g) Beginning with the first day of the next full fiscal year hereafter, the provisions of this Act shall supersede and repeal the provisions of the paragraph entitled "Management of National Wildlife Refuges" in the General Appropriation Act, 1951, approved September 6, 1950 (64 Stat. 595, 693-694).

June 15, 1935, c. 261, Title IV, § 401, 49 Stat. 383; 1939 Reorg.Plan No. II, § 4(f), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1433; 1940 Reorg.Plan No. III, § 3, eff. June 30, 1940, 5 F.R. 2108, 54 Stat. 1232; Oct. 31, 1951, c. 654, § 2(13), 65 Stat. 707; Aug. 30, 1964, Pub.L. 88-523, 78 Stat. 701; Oct. 15, 1966, Pub.L. 89-669, § 8(b), 80 Stat. 930; Dec. 28, 1973, Pub.L. 93-205, § 13(b), 87 Stat. 902.

16 U.S.C. § 715s (1974 and 1976 amendments). Participation of local government in revenue from areas administered by the United States Fish and Wildlife Service—Separate fund in United States Treasury; availability of funds until expended; definition of "National Wildlife Refuge System"

(a) Beginning with the next full fiscal year and for each fiscal year thereafter, all revenues received by the Secretary of the Interior from the sale or other disposition of animals, salmonoid carcasses, timber, hay, grass, or other products of the soil, minerals, shells, sand, or gravel, from other privileges, or from leases for public accommodations or facilities incidental to but not in conflict with the basic purposes for which those areas of the National Wildlife Refuge System were established, during each fiscal year in connection with the operation

and management of those areas of the National Wildlife Refuge System, National Fish Hatcheries, or other areas, that are solely or primarily administered by him, through the United States Fish and Wildlife Service, shall be covered into the United States Treasury and be reserved in a separate fund for disposition as hereafter prescribed. Amounts in the fund shall remain available until expended, and may be expended by the Secretary without further appropriation in the manner hereafter prescribed. The National Wildlife Refuge System (hereafter referred to as the "System") includes those lands and waters administered by the Secretary as wildlife refuges, lands acquired or reserved for the protection and conservation of fish and wildlife that are listed pursuant to section 1533 of this title as endangered species or threatened species, wildlife ranges, game ranges, wildlife management areas, and waterfowl production areas established under any law, proclamation, Executive, or public land order.

Deduction of expenses

(b) The Secretary may pay from the fund any necessary expenses incurred by him in connection with the revenue-producing and revenue-sharing measures of this section.

Payments to counties

(c) (1) The Secretary shall pay out of the fund, for each fiscal year beginning with the fiscal year ending September 30, 1979, to each county in which is situated any fee area whichever of the following amounts is greater:

(A) An amount equal to the product of 75 cents multiplied by the total acreage of that portion of the fee area which is located within such county.

(B) An amount equal to three-fourths of 1 per centum of the fair market value, as determined by

the Secretary, of that portion of the fee area (excluding any improvements thereto made after the date of Federal acquisition) which is located within such county.

(C) An amount equal to 25 per centum of the net receipts collected by the Secretary in connection with the operation and management of such fee area during such fiscal year; but if a fee area is located in two or more counties, the amount of each such county is entitled to shall be the amount which bears to such 25 per centum the same ratio as that portion of the fee area acreage which is within such county bears to the total acreage of such fee area.

(2) At the end of each fiscal year the Secretary shall pay out of the fund for such fiscal year to each county in which any reserve area is situated, an amount equal to 25 per centum of the net receipts collected by the Secretary in connection with the operation and management of such area during such fiscal year: *Provided,* That when any such area is situated in more than one county the distributive share to each county from the aforesaid receipts shall be proportional to its acreage of such reserve area.

(3) For purposes of this section, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands shall each be treated as a county.

(4) (A) For purposes of determining the fair market value of fee areas under paragraph (1) (B), the Secretary shall—

(i) appraise before September 30, 1979, all fee areas for which payments under this section were not authorized for fiscal years occurring before October 1, 1977; and

(ii) appraise all other fee areas, within five years after October 17, 1978, in the order in which such areas were first established by the Service.

After initial appraisal under clause (i) or (ii), each fee area shall thereafter be reappraised by the Secretary at least once during each five-year period occurring after the date of the initial appraisal. Until any fee area referred to in clause (ii) is initially appraised under this subparagraph, the fair market value of such area shall be deemed to be that adjusted cost of the area which was used to determine payments under this subsection for fiscal year 1977; and in no case may the amount of any payment to any local government under paragraph (1) (B) with respect to any fee area be less than the amount paid under paragraph (2) (A) of this subsection (as in effect on September 30, 1977) with respect to such area.

(B) The Secretary shall make the determinations required under this subsection in such manner as the Secretary considers to be equitable and in the public interest. All such determinations shall be final and conclusive.

(5) (A) Each county which receives payments under paragraphs (1) and (2) with respect to any fee area or reserve area shall distribute, under guidelines established by the Secretary, such payments on a proportional basis to those units of local government (including, but not limited to, school districts and the county itself in appropriate cases) which have incurred the loss or reduction of real property tax revenues by reason of the existence of such area. In any case in which a unit of local government other than the county acts as the collecting and distributing agency for real property taxes, the payments under paragraphs (1) and (2) shall be made to such other unit which shall distribute the payments in accordance with the guidelines.

(B) The Secretary may prescribe regulations under which payments under this paragraph may be made to

units of local government in cases in which subparagraph (A) will not effect the purposes of this paragraph.

(C) Payments received by units of local government under this subsection may be used by such units for any governmental purpose.

Authorization of appropriations equal to difference between amount of net receipts and aggregate amount of required payments

(d) If the net receipts in the fund which are attributable to revenue collections for any fiscal year do not equal the aggregate amount of payments required to be made for such fiscal year under subsection (c) of this section to counties, there are authorized to be appropriated to the fund an amount equal to the difference between the total amount of net receipts and such aggregate amount of payments.

Transfer and use of excess of net receipts over aggregate amount of required payments

(e) If the net receipts in the fund which are attributable to revenue collections for any fiscal year exceed the aggregate amount of payments required to be made for such fiscal year under subsection (c) of this section to counties, the amount of such excess shall be transferred to the Migratory Bird Conservation Fund for use in the acquisition of suitable areas for migratory bird refuges under the provisions of the Migratory Bird Conservation Act.

Terms, conditions and regulations for execution of revenue producing activities; disposal of animals

(f) The Secretary shall carry out any revenue producing activity referred to in subsection (a) (1), (2), and (3) of this section within any fee area or reserve

area subject to such terms, conditions, or regulations, including sales in the open markets, as the Secretary determines to be in the best interest of the United States. The Secretary may, in accordance with such regulations as the Secretary may prescribe, dispose of animals which are surplus as any such area by exchange of the same or other kinds, gift or loan to public institutions for exhibition or propogation purposes, and for the advancement of knowledge and the dissemination of information relating to the conservation of wildlife.

Definitions

(g) As used in this section—

(1) The term "Secretary" means the Secretary of the Interior.

(2) The term "fee area" means any area which was acquired in fee by the United States and is administered, either solely or primarily, by the Secretary through the Service.

(3) The term "reserve area" means any area of land withdrawn from the public domain and administered, either solely or primarily, by the Secretary through the Service.

(4) The term "Service" means the United States Fish and Wildlife Service.

(5) The term "county" means any county, parish, or organized or unorganized borough.

Administration of payments to local governments for entitlement lands; reserved areas as entitlement lands; payments as payments under specified provisions

(h) In administering sections 1601 and 1607 of Title 31, for fiscal years occurring after September 30, 1978—

(1) reserve areas shall be deemed to be entitlement lands for purposes of section 1606(a) of Title 31; and

(2) payments received by any unit of local government pursuant to subsection (c)(2) of this section shall be deemed to be payments under a provision of law specified in section 1604 of Title 31.

As amended Dec. 3, 1974, Pub. L. 93-509, § 4, 88 Stat. 1603; Oct. 17, 1978, Pub. L. 95-469, § 1(a), 92 Stat. 1319.

APPENDIX B

Title 30 United States Code

30 U.S.C. § 181. Lands subject to disposition; persons entitled to benefits; reciprocal privileges; helium rights reserved

Deposits of coal, phosphate, sodium, potassium, oil, oil shale, native asphalt, solid and semisolid bitumen, and bituminous rock (including oil-impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried) or gas, and lands containing such deposits owned by the United States, including those in national forests, but excluding lands acquired under the Appalachian Forest Act, and those in incorporated cities, towns, and villages and in national parks and monuments, those acquired under other Acts subsequent to February 25, 1920, and lands within the naval petroleum and oil-shale reserves, except as hereinafter provided, shall be subject to disposition in the form and manner provided by this chapter to citizens of the United States, or to associations of such citizens, or to any corporation organized under the laws of the United States, or of any State or Territory thereof, or in the case of coal, oil, oil shale, or gas, to municipalities. Citizens of another country, the laws, customs, or regulations of which deny similar or like privileges to citizens or corporations of this country, shall not by stock ownership, stock holding, or stock control, own any interest in any lease acquired under the provisions of this chapter.

The United States reserves the ownership of and the right to extract helium from all gas produced from lands leased or otherwise granted under the provisions of this chapter, under such rules and regulations as shall be prescribed by the Secretary of the Interior: *Provided further*, That in the extraction of helium from gas pro-

duced from such lands it shall be so extracted as to cause no substantial delay in the delivery of gas produced from the well to the purchaser thereof.

Feb. 25, 1920, c. 85, § 1, 41 Stat. 437; Feb. 7, 1927, c. 66, § 5, 44 Stat. 1058; Aug. 8, 1946, c. 916, § 1, 60 Stat. 950; Sept. 2, 1960, Pub. L. 86-705, § 7(a), 74 Stat. 790.

APPENDIX C

Title 30 United States Code

30 U.S.C. § 191. Disposition of moneys received

All money received from sales, bonuses, royalties, and rentals of public lands under the provisions of this chapter shall be paid into the Treasury of the United States; 37½ per centum thereof shall be paid by the Secretary of the Treasury as soon as practicable after December 31 and June 30 of each year to the State within the boundaries of which the leased lands or deposits are or were located; said moneys to be used by such State or subdivisions thereof for the construction and maintenance of public roads or for the support of public schools or other public educational institutions, as the legislature of the State may direct; and, excepting those from Alaska, 52½ per centum thereof shall be paid into, reserved and appropriated, as a part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902, and of those from Alaska 52½ per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof: *Provided*, That all moneys which may accrue to the United States under the provisions of this chapter from lands within the naval petroleum reserves shall be deposited in the Treasury as "miscellaneous receipts", as provided by the Act of June 4, 1920 (41 Stat. 813), as amended June 30, 1938 (52 Stat. 1252). All moneys received under the provisions of this chapter not otherwise disposed of by this section shall be credited to miscellaneous receipts.

Feb. 25, 1920, c. 85, § 35, 41 Stat. 450; May 27, 1947, c. 83, 61 Stat. 119; Aug. 3, 1950, c. 527, 64 Stat. 402; July 10, 1957, Pub. L. 85-88, § 2, 71 Stat. 282; July 7, 1958, Pub. L. 85-508, §§ 6(k), 28(b), 72 Stat. 343, 351.

30 U.S.C. § 191. Disposition of moneys received (1976 Amendments)

All money received from sales, bonuses, royalties, and rentals of the public lands under the provisions of this chapter and the Geothermal Steam Act of 1970, notwithstanding the provisions of section 20 thereof, shall be paid into the Treasury of the United States; 50 per centum thereof shall be paid by the Secretary of the Treasury as soon as practicable after March 31 and September 30 of each year to the State other than Alaska within the boundaries of which the leased lands or deposits are or were located; said moneys paid to any of such States on or after January 1, 1976, to be used by such State and its subdivisions, as the legislature of the State may direct giving priority to those subdivisions of the State socially or economically impacted by development of minerals leased under this chapter, for (i) planning, (ii) construction and maintenance of public facilities, and (iii) provision of public service; and excepting those from Alaska, 40 per centum thereof shall be paid into, reserved, appropriated, as part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902, and of those from Alaska as soon as practicable after March 31 and September 30 of each year, 90 per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof; *Provided*, That all moneys which may accrue to the United States under the provisions of this chapter and the Geothermal Steam Act of 1970 from lands within the naval petroleum reserves shall be deposited in the Treasury as "miscellaneous receipts", as provided by the Act of June 4, 1920 (41 Stat. 813), as amended June 30, 1938 (52 Stat. 1252). All moneys received under the provisions of this chapter and the Geothermal Steam Act of 1970 not otherwise disposed

of by this section shall be credited to miscellaneous receipts.

As amended Apr. 21, 1976, Pub. L. 94-273, § 6(2), 90 Stat. 377; Aug. 4, 1976, Pub. L. 94-377, § 9, 90 Stat. 1090; Sept. 28, 1976, Pub. L. 94-422, Title III, § 301, 90 Stat. 1323; Oct. 21, 1976, Pub. L. 94-579, Title III, § 317(a), 90 Stat. 2770.

APPENDIX D

Title 40 United States Code

43 U.S.C. § 1608(d).

All bonuses, rentals, and royalties received by the United States after December 18, 1971 from the disposition by it of such minerals in public lands in Alaska shall be distributed as provided in the Alaska Statehood Act, except that prior to calculating the shares of the State and the United States as set forth in such Act, (1) a royalty of 2 per centum upon the gross value of such minerals produced (as such gross value is determined for royalty purposes under the sale or lease), and (2) 2 per centum of all rentals and bonuses shall be deducted and paid into the Alaska Native Fund. The respective shares of the State and the United States shall be calculated on the remaining balance.

APPENDIX E

Title 43 United States Code

43 U.S.C. § 1608(g).

The payments required by this section shall continue only until a sum of $500,000,000.00 has been paid into the Alaska Native Fund less the total of advance payments paid into the Alaska Native Fund pursuant to section 407 of the Trans-Alaska Pipeline Authorization Act. Thereafter, payments which would otherwise go into the Alaska Native Fund will be made to the United States Treasury as reimbursement for the advance payments authorized by section 407 of the Trans-Alaskan Pipeline Authorization Act. The provisions of this section shall no longer apply, and the reservation required in patents under this section shall be of no further force and effect, after a total sum of $500,000,000.00 has been paid to the Alaska Native Fund and to the United States Treasury pursuant to this subsection.

No. 79-1904

IN THE

Supreme Court of the United States

OCTOBER TERM 1980

KENAI PENINSULA BOROUGH,
Petitioner

v.

STATE OF ALASKA, *et al.*,
Respondents

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

OPENING BRIEF OF KENAI PENINSULA BOROUGH

CHARLES K. CRANSTON
Attorney of Record
CRANSTON, WALTERS & DAHL
310 K Street
Anchorage, Alaska 99501
(907) 276-1994

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTION PRESENTED FOR REVIEW

Are revenues derived from federal oil and gas leases covering the Kenai National Moose Range, Alaska (a reserved land Federal Wildlife Refuge) to be distributed pursuant to 16 U.S.C. § 715s (The Wildlife Refuge Revenue Sharing Act), which allocates 25 per cent of such revenue to the county in which the refuge is located (The Kenai Peninsula Borough) and 75 per cent to the Federal Government for management of the wildlife refuge systems; or, are such revenues to be distributed pursuant to 30 U.S.C. § 191, (The Mineral Leasing Act of 1920), which allocates 90 per cent of such revenues to the State of Alaska and 10 per cent to the United States Treasury?*

---

* Additional parties involved are: Cecil D. Andrus, Secretary of the Interior, D. William Miller, Secretary of the Treasury and the Comptroller General of the United States, all of whom are petitioners in 79-1890 which has been consolidated with this case.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED FOR REVIEW	(i)
TABLE OF AUTHORITIES	v
OPINIONS BELOW	1
JURISDICTIONAL STATEMENT	2
STATUTES INVOLVED	2
STATEMENT OF THE CASE	9
A. Proceedings in Court Below	9
B. Statement of Facts	11
SUMMARY OF ARGUMENT	13
ARGUMENT	16
I. THERE IS AN IRRECONCILABLE CONFLICT BETWEEN 30 U.S.C. SECTIONS 181-191, THE MINERAL LEASING ACT, AND 16 U.S.C. SECTION 715s	16
II. REVENUE FROM FEDERAL OIL AND GAS LEASES UPON THE KENAI NATIONAL MOOSE RANGE, ALASKA, MUST BE DISTRIBUTED PURSUANT TO 16 U.S.C. § 715s AS AMENDED IN 1964	19
A. The Meaning of 16 U.S.C. § 715s is Clear and Unambiguous	19
B. The Legislative History of 16 U.S.C. § 715s as Amended in 1964, Even if Considered, Does Not Distort the Plain Meaning of the Statute	23

PREVIOUS PAGE WAS BLANK

TABLE OF CONTENTS—Continued

Page

C. 16 U.S.C. § 715s is Consistent With Congressional Concern Over Wildlife Refuges 26

D. 16 U.S.C. § 715s as Amended in 1964 Impliedly Repealed Those Inconsistent Provision of 30 U.S.C. § 191, the Mineral Leasing Act of 1920 29

III. THE OPINIONS OF THE SOLICITOR OF THE DEPARTMENT OF THE INTERIOR AND OF THE COMPTROLLER GENERAL ARE ENTITLED TO GREAT WEIGHT 30

CONCLUSION 31

TABLE OF AUTHORITIES

CASES Page

Armstrong Paint and Varnish Works v. *Nu-Enamel Corp.*, 305 U.S. 315, 83 L. Ed. 195 (1939) 20, 21
Binns v. *Lawrence*, 12 How. 9, 13 L. Ed. 871 (1851) 20
Browder v. *U.S.*, 312 U.S. 335, 85 L. Ed. 862 (1941) 20
Bulger v. *McCourt*, 179 Neb. 316, 138 N.W. 2d. 18 (1965) 20
Caminetti v. *U.S.*, 242 U.S. 470, 485 (1917) 20, 21
Calder v. *Bull*, 3 Dall. 386, 1 L. Ed. 648 (1798) 20
Cecil D. Andrus et al. v. *Alaska*, No. 79-1890 2
Cox v. *Lott* (*State Tonnage Tax Cases*) 12 Wall. 204, 20 L. Ed. 370 (1871) 20
Crain v. *Pure Oil Co.*, 25 F.2d 824 (10th Cir. 1928) 20
District of Columbia v. *Hutton*, 143 U.S. 18, 26-27, 36 L. Ed. 60, 62 (1892) 29
Humphreys-Mexia Co. v. *Grammon*, 113 Tex. 247, 254 S.W. 296 (1923) 20
Kenai Peninsula Borough v. *Alaska*, 611 F.2d 1210 (9th Cir. 1980) (Appendix B-1 through B-10, Kenai Peninsula Borough Petition for Writ of Certiorari) 1
Kenai Peninsula Borough v. *Andrus*, 436 F. Supp. 288 (D. Alaska, 1977). (Appendix A-1 through A-9, Kenai Peninsula Borough's Petition for Writ of Certiorari) 1
Kokoszka v. *Bellford*, 417 U.S. 642, 560, 41 L. Ed. 2d. 374-381 (1974) 29
Maritime Board v. *Isbrandtsen Co.*, 356 U.S. 481, 499, 2 L.Ed. 2d 926, 938 (1958) 30
Reiter v. *Sonotone Corp.*, 442 U.S. 330, 60 L. Ed. 2d 931 (1979) 19, 20
Shamrock Oil and Gas Corp. v. *Sheets*, 313 U.S. 100, 106-107, 85 L. Ed. 1214, 1218 (1941) 26
Shea v. *Vialpando*, 416 U.S. 251, 262, 40 L. Ed. 2d 120, 120 (1974) 30

TABLE OF AUTHORITIES—Continued

	Page
Train v. *Colorado Public Interest Resources Group*, 426 U.S. 1, 48 L. Ed. 2d 434 (1976)	22
Udall v. *Tallman*, 380 U.S. 1 (1965)	11
Ullman v. *United States*, 350 U.S. 422, 433, 100 L. Ed. 511, 522 (1956)	26
United States v. *Atlantic Refining Co.*, 360 U.S. 19, 3 L. Ed. 2d 1054 (1959)	30
United States v. *American Trucking Associations*, 310 U.S. 534, 84 L. Ed. 1345 (1940)	21, 22
United States v. *Henderson*, 11 Wall. 652, 657, 20 L. Ed. 235, 237 (1871)	29
United States v. *Shirey*, 359 U.S. 255, 3 L. Ed. 2d 789 (1959)	20
United States v. *Wiltberger*, 5 Wheat. 76, 95-96, 5 L. Ed. 37, 42 (1820)	23

STATUTES

16 U.S.C. § 715s	2, *passim*
16 U.S.C. § 715s(a)	15
16 U.S.C. § 715s(c)(1)	12, 13, 22, 25
16 U.S.C. § 715s(c)(2)	13, 22, 25
16 U.S.C. § 715s(e)	18
16 U.S.C. § 715s(g)(2)	11
16 U.S.C. § 715s(g)(3)	11
28 U.S.C. § 1254(1)	2
30 U.S.C. § 181	6, *passim*
30 U.S.C. § 191	7, *passim*
30 U.S.C. § 351 et seq.	24
30 U.S.C. § 355	8
43 U.S.C. §§ 1601-1624	13
Alaska Statehood Act of 1958, Pub. L. No. 85-508, 72 Stat. 339, Section 28(b)	9, 17
Clayton Act, 38 Stat. 731 Section 4	19
Federal Water Pollution Control Act, 86 Stat. 816	22
1920 Trademark Act	20
Motor Carrier Act 1935	21

TABLE OF AUTHORITIES—Continued

Page

Game Laws of May 25, 1900, 31 Stat. 187, 16 U.S.C. 701. See also 18 U.S.C. 41, et seq. 28
Game Birds' Eggs Act of June 3, 1902, 32 Stat. 285, 16 U.S.C. 702 28
Migratory Birds Act of March 4, 1913, 37 Stat. 847, 16 U.S.C. 673 28
Kansas Game Preserve Act of June 22, 1916, 39 Stat. 233, and March 10, 1928, 45 Stat. 300 28
Migratory Birds Treaty Act of July 3, 1918, 40 Stat. 755, 16 U.S.C. 703-711 28
Migratory Birds Protection Proclamation of July 31, 1918, 40 Stat. 1812 28
Ozark National Forest Game Refuge Act of February 28, 1925, 43 Stat. 1091, 16 U.S.C. 682 28
Ozark National Game Refuge Proclamation, April 26, 1926, 44 Stat. 2611 28
The Upper Mississippi Wild Life and Fish Refuge Act of June 7, 1924, 43 Stat. 650, 16 U.S.C. 721 *et seq.* 28
Fish Conservation Act of May 1, 1928, 45 Stat. 478 28
Fish and Game Preserve Act (Idaho), December 15, 1928, 45 Stat. 1022 28
Fish Culture Act, January 29, 1929, 45 Stat. 1142 28
Migratory Bird Conservation Act of February 18, 1929, 45 Stat. 1222, 16 U.S.C. 715-715r 28
Migratory Bird Conservation Act of March 16, 1934, 48 Stat. 452, 16 U.S.C. 718-718H 28
Wildlife Conservation Act of May 19, 1948, 62 Stat. 240, 16 U.S.C. 667 B-667d 28
Fish Restoration and Management Projects Act of August 9, 1950, 64 Stat. 430, 16 U.S.C. 777 *et seq.* 29
Migratory Birds Conservation Act of July 30, 1956, 70 Stat. 722, 16 U.S.C. 718a *et seq.* 29
Fish and Wildlife Act of August 8, 1956, 70 Stat. 1119, 16 U.S.C. 742a *et seq.* 29

TABLE OF AUTHORITIES—Continued

LEGISLATIVE HISTORY Page

88th Congress, Second Session, House Report 1753 25

88th Congress, Second Session, Senate Report 1096 25

88th Congress, Second Session,

Hearings on H.R. 1127, ... 25, 26
H.R. 2393, ... 25, 26
H.R. 5996, ... 25, 26
H.R. 9030, ... 25, 26
H.R. 1008 ..... 25, 26

88th Congress, Second Session,

Hearings on S. 179, ... 25, 26
S. 1363, ... 25, 26
S. 1720, ... 25, 26
S. 2498 ..... 25, 26

OTHER AUTHORITY

Executive Order 8979, 6 Fed. Reg. 6471 11

IN THE

Supreme Court of the United States

OCTOBER TERM 1980

No. 79-1904

KENAI PENINSULA BOROUGH,
Petitioner

v.

STATE OF ALASKA, *et al.*,
Respondents

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

OPENING BRIEF OF KENAI PENINSULA BOROUGH

OPINIONS BELOW

Kenai Peninsula Borough v. *Andrus*, 436 F. Supp. 288 (D. Alaska, 1977). (Appendix A-1 through A-9, Kenai Peninsula Borough's Petition for Writ of Certiorari).

Kenai Peninsula Borough v. *Alaska*, 611 F. 2d 1210 (9th Cir. 1980) (Appendix B-1 through B-10, Kenai Peninsula Borough Petition for Writ of Certiorari).

JURISDICTIONAL STATEMENT

1. The judgment of the United States Court of Appeals for the Ninth Circuit was entered on February 5, 1980. There was no order for a rehearing.

2. By an order dated May 7, 1980 by Mr. Justice Rehnquist granted an extension of time to and including June 2, 1980 within which to petition for a writ of certiorari. The Kenai Peninsula Borough's Petition for Writ of Certiorari was filed on June 2, 1980. On October 6, 1980 the Supreme Court granted the petition for Writ of Certiorari as well as a similar petition in *Cecil D. Andrus et al.* v. *Alaska*, No. 79-1890. The two cases are consolidated.

3. This Court has jurisdiction to review the judgment entered by the United States Court of Appeals for the Ninth Circuit under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

Title 16, United States Code. (Wildlife Refuge Revenue Sharing Act).

At the time of the filing of the complaint in this action on May 14, 1976, 16 U.S.C. § 715s provided in pertinent part:

> (a) Beginning with the next full fiscal year and for each fiscal year thereafter, all revenues received by the Secretary of the Interior from the sale or other disposition of aninals, timber, hay, grass, or other products of the soil, minerals, shells, sand, or gravel, from other privileges, or from leases for public accommodations or facilities incidental to but not in conflict with the basic purposes for which those areas of the National Wildlife Refuge System were established, during each fiscal year in connection with the operation and management of those areas of the National Wildlife Service, shall be covered into

the United States Treasury and be reserved in a separate fund for disposition as hereafter prescribed. Amounts in the fund shall remain available until expended, and may be expended by the Secretary without further appropriation in the manner hereafter prescribed. The National Wildlife Refuge System (hereafter referred to as the "System") includes those lands and water administered by the Secretary as wildlife refuges, lands acquired or reserved for the protection and conservation of fish and wildlife that are listed pursuant to section 1533 of this title as endangered species or threatened species, wildlife ranges, game ranges, wildlife management areas, and waterfowl production areas established under any law, proclamation, Executive, or public land order.

Deduction of expenses

(b) The Secretary may pay from the fund any necessary expenses incurred by him in connection with the revenue-producing measures set forth in subsection (a) of this section.

Payments to counties

(c) The Secretary, at the end of each fiscal year, shall pay, out the net receipts in the fund (after payment of necessary expenses) for such fiscal year, which funds shall be expended solely for the benefit of public schools and roads as follows:

(1) to each county in which reserved public lands in an area of the System are situated, an amount equal to 25 per centum of the net receipts collected by the Secretary from such reserved public lands in that particular area of the System: Provided, That when any such area is situated in more than one county the distributive share to each county from the aforesaid receipts shall be proportional to its acreage of such public lands therein; and

(2) to each county in which areas in the System are situated that have been acquired in fee by the United States, either (A) three-fourths of 1 per centum of the cost of the areas, exclusive of any improvements to such areas made subsequent to Federal acquisition, such cost to be adjusted to represent current values as determined by the Secretary for the first full fiscal year after enactment of this Act and as redetermined by him at five-year intervals thereafter, or (B) 25 per centum of the net receipts collected by the Secretary from such acquired lands in that particular area of the System within such counties, whichever is greater. The determinations by the Secretary under this subsection shall be accomplished in such manner as he shall consider to be equitable and in the public interest, and his determinations hereunder shall be final and conclusive.

16 U.S.C. § 715s was amended in 1976, in part, to read as follows:

Payments to counties

(c) (1) The Secretary shall pay out of the fund, for each fiscal year beginning with the fiscal year ending September 30, 1979, to each county in which is situated any fee area whichever of the following amounts is greater:

(A) An amount equal to the product of 75 cents multiplied by the total acreage of that portion of the fee area which is located within such county.

(B) An amount equal to three-fourths of 1 per centum of the fair market value, as determined by the Secretary, of that portion of the fee area (excluding any improvements thereto made after the date of Federal acquisition) which is located within such county.

(C) An amount equal to 25 per centum of the net receipts collected by the Secretary in connection with the operation and management of such fee area during such fiscal year; but if a fee area is located in two or more counties, the amount of each such county is entitled to shall be the amount which bears to such 25 per centum the same ratio as that portion of the fee area acreage which is within such county bears to the total acreage of such fee area.

(2) At the end of each fiscal year the Secretary shall pay out of the fund for such fiscal year to each county in which any reserve area is situated, an amount equal to 25 per centum of the net receipts collected by the Secretary in connection with the operation and management of such area during such fiscal year: Provided, That when any such area is situated in more than one county the distributive share to each county from the aforesaid receipts shall be proportional to its acreage of such reserved area.

Definitions

(g) As used in this section—

(1) The term "Secretary" means the Secretary of the Interior.

(2) The term "fee area" means any area which was acquired in fee by the United States and is administered, either solely or primarily, by the Secretary through the Service.

(3) The term "reserve area" means any area of land withdrawn from the public domain and administered, either solely or primarily, by the Secretary through the Service.

(4) The term "Service" means the United States Fish and Wildlife Service.

(5) The term "county" means any county, parish, or organized or unorganized borough.

Administration of payments to local governments for entitlement lands; reserved areas as entitlement lands; payments as payments under specified provisions

(h) In administering sections 1601 and 1607 of Title 31, for fiscal years occurring after September 30, 1978—

(1) reserve areas shall be deemed to be entitlement lands for purposes of section 1606(a) of Title 31; and

(2) payments received by any unit of local government pursuant to subsection (c)(2) of this section shall be deemed to be payments under a provision of law specified in section 1604 of Title 31.

Title 30 United States Code
(Mineral Leasing Act of 1920)

30 U.S.C. § 181. Deposits of coal, phosphate, sodium, potassium, oil, oil shale, native asphalt, solid and semisolid bitumen, and bituminous rock (including oil-impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried) or gas, and lands containing such deposits owned by the United States, including those in national forests, but excluding lands acquired under the Appalachian Forest Act, and those in incorporated cities, towns, and villages and in national parks and monuments, those acquired under other Acts subsequent to February 25, 1920, and lands within the naval petroleum and oil-shale reserves, except as hereinafter provided, shall be subject to disposition in the form and manner provided by this chapter to citizens of the United States, or to associations of such citizens, or to any corporation organized under the laws of the United States, or of any State of Territory thereof, or in the case of coal, oil, oil shale, or gas, to municipalities. Citizens of another country, the laws, customs, or regulations

of which deny similar or like privileges to citizens or corporations of this country, shall not by stock ownership, stock holding, or stock control, own.

30 U.S.C. § 191. All money received from sales, bounses, royalties, and rentals of public lands under the provisions of this chapter shall be paid into the Treasury of the United States; 37½ per centum thereof shall be paid by the Secretary of the Treasury as soon as practicable after December 31 and June 30 of each year to the State within the boundaries of which the leased lands or deposits are or were located; said moneys to be be used by such State or subdivisions thereof for the construction and maintenance of public roads or for the support of public schools or other public educational institutions, as the legislature of the State may direct; and, excepting those from Alaska, 52½ per centum thereof shall be paid into, reserved and appropriated, as a part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902, and of those from Alaska 52½ per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof: Provided, That all moneys which may accrue to the United States under the provisions of this chapter from lands within the naval petroleum reserves shall be deposited in the Treasury as "miscellaneous receipts", as provided by the Act of June 4, 1920 (41 Stat. 813), as amended June 30, 1938 (52 Stat. 1252). All moneys received under the provisions of this chapter not otherwise disposed of by this section shall be credited to miscellaneous receipts.

30 U.S.C. § 191. Disposition of money received (1976 Amendments)

All money received from sales, bonuses, royalties, and rentals of the public lands under the provisions of this chapter and the Geothermal Steam Act of 1970, notwithstanding the provisions of section 20 thereof, shall be paid into the Treasury of the United States; 50 per centum thereof shall be paid

by the Secretary of the Treasury as soon as practicable after March 31 and September 30 of each year to the State other than Alaska within the boundaries of which the leased lands or deposits are or were located; said moneys paid to any of such States on or after January 1, 1976, to be used by such State and its subdivisions, as the legislature of the State may direct giving priority to those subdivisions of the State socially or economically impacted by development of minerals leased under this chapter, for (i) planning, (ii) construction and maintenance of public facilities, and (iii) provision of public service; and excepting those from Alaska, 40 per centum thereof shall be paid into, reserved, appropriated, as part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902, and of those from Alaska as soon as practicable after March 31 and September 30 of each year, 90 per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof; Provided, That all moneys which may accrue to the United States under the provisions of this chapter and the Geothermal Steam Act of 1970 from lands within the naval petroleum reserves shall be deposited in the Treasury as "miscellaneous receipts", as provided by the Act of June 4, 1920 (41 Stat. 813), as amended June 30, 1938 (52 Stat. 1252). All moneys received under the provisions of this chapter and the Geothermal Steam Act of 1970 not otherwise disposed of by this section shall be credited to miscellaneous receipts.

30 U.S.C. § 355. (Portion of Mineral Leasing Act for Acquired Lands) provides in pertinent part:

All receipts derived from leases issued under the authority of this chapter shall be paid into the same funds or accounts in the Treasury and shall be distributed in the same manner as prescribed for other receipts from the lands affected by the lease, the intention of this provision being that this chapter shall

not affect the distribution of receipts pursuant to legislation applicable to such land * * *.

Alaska Statehood Act of 1958,
Pub. L. No. 85-508, 72 Stat. 339,

Section 28(b):

"Section 35 of the Act entitled 'an act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain', approved February 25, 1920, as amended (30 U.S.C. § 191), is hereby amended by inserting immediately before the colon proceeding the first proviso thereof the following: ', and of those from Alaska 52½ per centum thereof shall be paid to the State of Alaska for deposition by the legislature thereof.' "

STATEMENT OF THE CASE

A. Proceeding in Court Below

This case involves consolidated suits by the Kenai Peninsula Borough, an Alaska county type municipal corporation (hereinafter "Kenai"), and the State of Alaska (hereinafter "Alaska") against the Secretary of the Interior and other Federal officials for declaratory relief and writs of mandate (A. 8; 16). Kenai sought a declaratory judgment that revenue derived from Federal oil and gas leases covering the Kenai National Moose Range, a reserved land national wildlife refuge, be allocated pursuant to 16 U.S.C. § 715s (The Wildlife Refuge Revenue Sharing Act). Under that section Kenai would receive 25 per cent (25%) of such net revenue, the remaining 75 per cent (75%) would be paid to the United States Treasury to be expended for the management of the National Wildlife Refuge System.

Alaska sought a declaratory judgment that such revenue be distributed pursuant to 30 U.S.C. § 181, et seq.,

the Mineral Leasing Act of 1920 (A. 8). Under that act 90 per cent (90%) of the revenue would be distributed to the State and 10 per cent (10%) to the United States. Both Kenai and Alaska sought writs of mandate compelling the appropriate federal officials to distribute the revenue in a manner consistent with their respective statutory claims. In each suit the Secretary of the Interior sought a judgment declaring that the involved revenues be allocated pursuant to 16 U.S.C. § 715s. (A. 28).

The two separate actions were consolidated (A. 26) and after consolidation Kenai intervened in Alaska's suit and sought the same relief as in its original suit. (A. 35).

Ultimately all of the parties, Kenai, Alaska and the Federal defendants, filed motions for partial summary judgment. After briefing and oral argument, the United States District Court granted Alaska's motion for partial summary judgment.[1] Pursuant to that ruling judgment was entered in favor of Alaska on October 10, 1977. That judgment declared that the involved revenue be allocated between Alaska and the United States pursuant to 30 U.S.C. § s 181 et seq.

The Federal defendants and Kenai appealed the District Court Judgment to the Court of Appeals for the Ninth Circuit. By its judgment of February 5, 1980 the Court of Appeals affirmed the judgment of the District Court. (Kenai's Petition for Writ of Certoriari, Appendix B-2).

---

[1] The motions were for partial summary judgment only on the issue of which statutory method of allocation applied to the revenues in questions. Other issues concerning the reallocation of revenues already distributed were not involved.

B. Statement of Facts

This dispute centers on the meaning of 16 U.S.C. § 715s, as amended on August 30, 1964 by Pub. Law 88-523, 78 Stat. 701-702. The 1964 amendment to 16 U.S.C. § 715s was a revision of a Wildlife Refuge Revenue Sharing Act. As first enacted on June 15, 1935, 49 Stat. 383, the Act distributed seventy five percent of the net revenue derived from the sale of certain products of wildlife refuges to the county in which the refuge was located. The United States retained the remainder of the revenue. Proceeds from the sales of minerals were not specifically designated for distribution under the 1935 formula.

The 1964 amendment to 16 U.S.C. § 715s added the word "minerals" to the list of resources the revenue from which was to be distributed to counties under the Wildlife Revenue Sharing Act. In addition the 1964 amendment to 16 U.S.C. § 715s distinguished between revenue derived from reserved [2] land refuges and that derived from acquired [3] land refuges.

The Kenai National Moose Range is a reserved land wildlife refuge located wholly within the Kenai Peninsula Borough, Alaska. It was established on December 16, 1941, Executive Order 8979, 6 Fed. Reg. 6471 (R. 906). The refuge comprises of approximately 2 million acres, see *Udall* v. *Tallman*, 380 U.S. 1 (1965). Since 1959 revenue has been derived from Federal oil and gas leases on the Kenai National Moose Range. (R. 66-67; 229-230). From 1959 through 1976 approximately

---

[2] Reserved land means an area withdrawn from the public domain and reserved as a Wildlife Refuge, 16 U.S.C. § 715s (g)(3), as amended in 1976.

[3] Acquired land means land which is acquired in fee by the United States and then administered as a Wildlife Refuge, 16 U.S.C. § 715s (g)(2), as amended in 1976.

ninety percent of that revenue was distributed to the State of Alaska and ten percent to the United States (A. 60). These distributions have totaled approximately $57,239,586.03 (R. 949). Since 1976 the oil and gas lease revenues from the Kenai National Moose Range have been and are being held in a suspense account pending the resolution of this dispute (A. 27, 60).

In 1975 the Director of the United States Fish and Wildlife Service requested an opinion from the Solicitor of the Department of the Interior as to whether the 1964 amendment to 16 U.S.C. § 715s required that receipts from oil and gas leases on reserved land wildlife refuges be distributed pursuant to 16 U.S.C. § 715s or whether they be distributed pursuant to 30 U.S.C. § 181 et seq., the Mineral Leasing Act. The Solicitor concluded that oil and gas revenues must be distributed in accordance with the 1964 amendments to § 715s irrespective of whether the refuge involved was a reserved land or acquired land refuge (Opinion, Solicitor Department of the Interior, Appendix D, Petition of Cecil D. Andrus et al., for Writ of Certiorari.)

The Solicitor for the Department of the Interior requested the Comptroller General for an opinion as to whether he concurred in the solicitor's opinion referred to above. In opinion B-118678, dated July 29, 1975, (Appendix E, Petition of Cecil D. Andrus, et al., for Writ of Certiorari), the Comptroller General concluded:

> ". . . that Congress intended the disposition of receipts from minerals on wildlife refuges to be governed by 16 U.S.C. § 715s as amended. We note that to hold otherwise as the Solicitor's memorandum points out would be to deprive § 715s (c) (1) of Title 16, prescribing a specific scheme of distribution for revenues from refuges created by reservation, of any meaning."

The State of Alaska, through its then Attorney General, sought a modification of the Comptroller General's

opinion to reflect the States' position that oil and gas revenues from wildlife refuges on reserved lands be distributed according to the Mineral Leasing Act and not 16 U.S.C. § 715s (A. 94-103).

On June 11, 1976 the Comptroller General, upon reconsideration, affirmed his earlier decision (R. 211-221; Appendix F, Petition of Cecil D. Andrus et al for Writ of Certiorari). In his decision on reconsideration the Comptroller General stated in part:

> "the language of § 715s, as amended, compels a different conclusion [from that of Alaska]. It adds revenues from minerals to the fund established by subsection (a), and provides for distribution of net receipts in the fund, according to the formulas described in subsections (c) (1) and (c) (2), both to counties in which acquired refuges are situated and to those which reserved refuges are situated. There is no way to read this provision as excepting oil and gas revenues from the fund, but only to the extent they derive from refuges on reserved land, without doing violence to the plain meaning of the statute."

In addition the Comptroller General considered the arguments of Alaska that the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601-1624, compelled distribution pursuant to the Mineral Leasing Act. He found these arguments unpersuasive.

Since the parties were unable to agree upon a resolution of this dispute these suits followed.

SUMMARY OF ARGUMENT

1. There is an irreconcilable conflict between 30 U.S.C. §§ 181-191, the Mineral Leasing Act, and 16 U.S.C § 715s the Wildlife Refuge Revenue Sharing Act. Specific reference to the provisions of 30 U.S.C. § 191, the Mineral Leasing Act, and 16 U.S.C. § 715s, the Wild-

life Refuge Revenue Sharing Act discloses an irreconcilable conflict in their terms. The Mineral Leasing Act would require that ten percent of the net revenues derived from oil and gas leases on the Kenai National Moose Range be paid to the United States Treasury and ninety percent of said revenues to the State of Alaska. On the other hand, under 16 U.S.C. § 715s twenty five percent of the net revenues derived from oil and gas leases on the Kenai National Moose Range will be paid to the Kenai Peninsula Borough and seventy five percent of those net revenues to the United States Treasury. Since there is no way to reconcile the terms of those statutes, an irreconcilable conflict exists.

2. Revenue from Federal oil and gas leases upon the Kenai National Moose Range, Alaska, must be distributed pursuant to 16 U.S.C. § 715s as amended in 1964.

a. The meaning of 16 U.S.C. § 715s is clear and unambiguous. Reference to the terms of 16 U.S.C. § 715s discloses no ambiguity in its terms. There can be no doubt that the Statute requires that twenty five percent of the net revenues derived from oil and gas leases situated upon the Kenai National Moose Range, Alaska, must be paid to the county (borough) in which the refuge is situated and seventy five percent of such net revenue to the United States Treasury. This rule must apply whether the refuge involved is an acquired land refuge or a reserved land refuge.

Since there is no inconsistency in the language of the statute, none of the exceptions to the "plain meaning" rule of statutory interpretation applied by this Court in other cases is applicable here. That is to say application of the "plain meaning" rule to 16 U.S.C. § 715s does not lead to an absurd or futile result; nor does it lead to an unreasonable result at variance with the policy of the legislation as a whole.

b. The legislative history of 16 U.S.C. § 715s as amended in 1964, even if considered, does not distort

the plain meaning of the statute. There is nothing in that legislative history which supports the conclusion that net proceeds of mineral revenues from oil and gas leases on the Kenai National Moose Range should be allocated in a manner different from that required by the plain meaning of the statute. The fact that there is no specific reference in the legislative history as to the word "minerals" as that term appears in 16 U.S.C. § 715s (a) does not support a conclusion that the legislative history of the amendment requires allocation in a manner different from that specifically set forth in the act. In particular, there is nothing in the legislative history that supports a conclusion that mineral revenues derived from oil and gas leases on reserved land national wildlife refuges should be distributed pursuant to 30 U.S.C. § 191 and that the same revenues derived from acquired land refuges should be distributed pursuant to 16 U.S.C. § 715s.

c. 16 U.S.C. § 715s is consistent with congressional concern over wildlife refuges. The provisions contained in 16 U.S.C. § 715s which require that twenty five percent of the revenues from the sale of oil and gas leases situated on the Kenai National Moose Range be distributed to the Kenai Peninsula Borough and that seventy five percent of said revenue be distributed to the United States government is consistent with the objectives of that Act as well as other Acts affecting wildlife refuges. The payment of seventy five percent of said net proceeds to the special fund provided for in 16 U.S.C. § 715s satisfies the need to provide a source of revenue for refuge management and maintenance. In addition the payment of twenty five percent of said net revenue to the county in which the refuge is situated will compensate the county for tax revenue lost because of the public status of the land as well as for services it must provide incident to the industrial development carried on within its boundaries.

16 U.S.C. § 715s is not an isolated example of Congress' intent to legislate specifically with regard to wildlife refuges and wildlife management. To the contrary the statute is consistent with numerous other laws passed by Congress for the protection and management of wildlife refuges.

d. 16 U.S.C. § 715s as amended in 1964 impliedly repealed those inconsistent provisions of 30 U.S.C. § 191 the Mineral Leasing Act of 1920. To the extent that the terms of 30 U.S.C. § 191 are repugnant to 16 U.S.C. § 715s, as amended in 1964, the later statute, 16 U.S.C. § 715s, must prevail.

3. The opinions of the Solicitor of the Department of the Interior and of the Comptroller General are entitled to great weight. The rulings and opinions of those officials constitute informed judgments to which this Court may look for guidance. Furthermore those opinions should not be overruled except for compelling reasons, particularly when those opinions are consistent with the "plain meaning" rule.

ARGUMENT

I

THERE IS AN IRRECONCILABLE CONFLICT BETWEEN 30 U.S.C. SECTIONS 181-191, THE MINERAL LEASING ACT, AND 16 U.S.C. SECTION 715s

The principal issue to be decided in this suit is which statute governs the manner for allocating revenues derived from Federal oil and gas leases on the Kenai National Moose Range, Alaska.

Kenai and Federal Defendants claim that 16 U.S.C. § 715s, as amended in 1964,[4] requires distribution of

[4] Act of August 30, 1964, P. L. 88-523, 78 Stat. 701.

twenty five percent of those proceeds to Kenai and seventy five percent thereof to a special fund of the United States Treasury. Alaska, on the other hand, claims that the proceeds of those leases must be distributed pursuant to 30 U.S.C. § 181-191, The Mineral Leasing Act of 1920. Under that Act ten percent of such revenue is distributed to the Treasury of the United States and ninety percent thereof to Alaska.[5] It is clear, based upon the positions of the parties, that there is no way to reconcile the two statutes involved. This is apparent by reference to the pertinent provisions of each Act.

A. *16 U.S.C. § 715s, as amended in 1964, (Wildlife Refuge Revenue Sharing Act.)*

16 U.S.C. § 715s, as amended in 1964, provides in pertinent part:

> (a) ". . . all revenues received by the Secretary of the Interior from the sale or other disposition of animals, timber, hay, grass, or other products of the soil, minerals, shells, sand, or gravel, from other provilges, . . . during each fiscal year in connection with the operation and management of those areas of the National Wildlife Refuge System that are solely or primarily administered by him, through the United States, Fish and Wildlife Service, shall be covered into the United States Treasury and be reserved in a separate fund for disposition as hereafter prescribed . . .
>
> (b) ". . .
>
> (c) "The Secretary, at the end of each fiscal year, shall pay out of the net receipts in the fund . . . for such fiscal year, which funds shall be expended

---

[5] Section 28(b) of the Alaska Statehood Act, 72 Stat. 339, amended the Mineral Leasing Act, 30 U.S.C. § 191 so as to increase Alaska's share in the revenue payable under that act from thirty seven and one half percent to ninety percent.

solely for the benefit of public schools and roads as follows:

> (1) to each county in which reserve public lands in an area of the system are situated, an amount equal to Twenty five per centum of the net receipts . . .
>
> (2) to each county in which areas in the System are situated that have been acquired in fee by the United States, either (A) three fourths of one per centum of the cost of the areas, or, (B) twenty five per centum of the net receipts . . ."

16 U.S.C. § 715s, as amended, clearly and unambiguously allocates twenty five percent of the net mineral revenue of a reserved land wildlife refuge to the county in which the refuge is located. Seventy five percent thereof is paid into a special fund for the management of the fish and wildlife system, 16 U.S.C. § 715s (e).

B. *30 U.S.C. § 191 (The Mineral Leasing Act of 1920).*

30 U.S.C. § 191 read in pertinent part:

> "All money received from sales, bonuses, and royalties of the public lands under the provisions of this chapter . . . shall be paid into the Treasury of the United States . . .; . . . and of those from Alaska as soon as practicable after March 31 and September 30 of each year, ninety per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof; . . ."

The sole issue presented in these suits is to resolve the irreconcilable conflict between the two statutes by determining which statute applies to the oil and gas revenues derived from the Kenai Peninsula Moose Range.

II

REVENUE FROM FEDERAL OIL AND GAS LEASES UPON THE KENAI NATIONAL MOOSE RANGE, ALASKA, MUST BE DISTRIBUTED PURSUANT TO 16 U.S.C. § 715s AS AMENDED IN 1964

We have shown above, that 16 U.S.C. § 715s, as amended in 1964, when carefully read, by its own terms unambiguously requires allocation of twenty five percent of the net oil and gas revenue to the county in which the reserved land refuge is located. There are several reasons which compel this interpretation of the statute.

A. The Meaning of 16 U.S.C. § 715s is Clear and Unambiguous

These cases present a classic opportunity to invoke the basic rule of statutory construction most recently applied by this court in *Reiter* v. *Sonotone Corp.*, 442 U.S. 330, 60 L. Ed. 2d. 931 (1979). This Court said:

> "As is true in every case involving the construction of a statute, our starting point must be the language employed by Congress." (442 U.S. at p. 337).

A careful reading of the relevant portions of 16 U.S.C. § 715s can lead only to the conclusion that there is no ambiguity as to the manner in which oil and gas revenues from reserved land wildlife refuges are to be distributed. Twenty five percent thereof is to go to the county in which the refuge is situated and seventy five percent thereof to the Federal Fish and Wildlife Fund.

In *Reiter* v. *Sonotone Corp.*, *supra*, the Court of Appeals contrued the term "business or property" in section 4 of the Clayton Act, 38 Stat. 731, to refer only to business property. This Court reversed, stating that:

> "In construing a statute we are obliged to give effect, if possible to every word Congress used." (442 U.S. at p. 339).

Applying that standard to this case, the word "minerals" in 16 U.S.C. § 715s (a) must be interpreted so as to include oil and gas.[6] Beyond that, there is nothing in the words used by Congress in the statute which suggests that the term "mineral" refers only to mineral revenues from acquired land refuges and not reserved land refuges. Such an interpretation results in the type of strained construction of the statute criticized by this Court in *Reiter* v. *Sonotone Corp., supra.* Nevertheless, the decision of each court below is based on such a judicially created restrictive application of the term "minerals". Those decisions were clearly erroneous.

The principles of statutory construction relied on in *Sonotone* are the most recent application of the "plain meaning" rule recognized by this Court from its earliest days, *Calder* v. *Bull*, 3 Dal. 386, 1. L. Ed. 648 (1798), and applied in numerous decisions since then.[7]

Nevertheless this Court has recognized exceptions to the application of the "plain meaning" rule. Thus, if the application of the "plain meaning" rule will lead to an absurd or futile result, the Court will look beyond the specific language of the act to ascertain its meaning, *Armstrong Paint and Varnish Works* v. *Nu-Enamel Corp.*, 305 U.S., 315, 83 L. Ed. 195 (1939).[8] The appli-

---

[6] The term "minerals" has been universally construed to include oil and gas, *Crain* v. *Pure Oil Co.*, 25 F. 2d. 824 (10th Cir. 1928), *Humphreys-Mexia Co.* v. *Grammon*, 113 Tex. 247, 254 S. W. 296 (1923), *Bulger* v. *McCourt*, 179 Neb. 316, 138 N. W. 2d 18 (1965).

[7] For example, see *Binns* v. *Lawrence*, 12 How. 9, 13 L. Ed. 871 (1851), *Cox* v. *Lott (State Tonnage Tax Cases)* 12 Wall. 204, 20 L. Ed. 370 (1871), *Caminetti* v. *United States*, 242 U.S. 470, 61 L. Ed. 442 (1917), *Browder* v. *United States*, 312 U.S. 335, 85 L. Ed. 862 (1941), *United States* v. *Shirey*, 359 U.S. 255, 3 L. Ed. 2d 789 (1959).

[8] In *Armstrong* the Court interpreted the 1920 Trademark Act so as to permit registration of descriptive word trademarks, con-

cation of the "plain meaning" rule to 16 U.S.C. § 715s does not lead to an absurd or futile result. Clearly the allocation of twenty five percent of the mineral revenue to the county in which a reserved land wildlife refuge is located is reasonable, particularly when a county having acquired land may be the recipient of such revenue.[9]

A second exception to the "plain meaning" rule applies when a literal interpretation of the statute would produce an unreasonable result, at variance with the policy of the legislation as a whole, *United States* v. *American Trucking Associations*, 310 U.S. 534, 84 L. Ed. 1345 (1940). However, an unforeseen result is not the type of result to which this exception to the "plain meaning" rule applies, *Armstrong Paint and Varnish Works* v. *Nu-Enamel Corp.*, *supra*, at 333 (1939), *Caminetti* v. *U.S.*, 242 U.S. 470, 485 (1917). *U.S.* v. *American Trucking Associations*, *supra*, is a striking example of the type of case in which the unreasonable result exception applies. In that case the Interstate Commerce Commision had the authority to set the maximum hours of service of employees of common and contract carriers. This Court was faced with the issue of whether the term "employee" in the Motor Carrier Act of 1935 related only to those employees whose activities affected the safety of operations, or whether the term referred to all employees of a common and contract carrier by motor vehicle. The Court recognized that the term "employee" was not defined in the Act. In addition the Court recognized that in other Acts Congress gave the term both broad and narrow meanings. The same was found to be true in Court decisions where the term had no definite content,

---

cluding that the contrary interpretation would render the act meaningless.

[9] For many years Plaquemines Parish, Louisiana, has received substantial oil and gas mineral revenue from the Delta National Wildlife Refuge, an acquired land refuge (R. 362-366).

U.S. v. *American Trucking Association, supra,* fn. 29 at p. 545. Thus in order to ascertain the meaning of the term "Employee" as used in the Act, this Court concluded that it must review the legislative history of the Motor Carrier Act. After reviewing that history it was clear that Congress' intent was that the Act should apply only to those employees whose activities affected safety. Thus this Court interpreted the term "employee" in that context.

In the present case, no such problem exists. Unlike the term "employee" in the *American Trucking Asociations* case which this Court found to have no fixed and definite meaning, the word "minerals" does. As we have shown at page 27, *supra,* the term "minerals" definitely includes oil and gas. Moreover, the term "net receipts" as used in 16 U.S.C. § 715s (c) (1), refers to those receipts which are collected from the reserved public lands in the wildlife refuge system. The sources of those receipts are described in subparagraph (a) and include revenues from the sale of minerals. Moreover, it is significant that subsection (c) (2) (B) uses exactly the same structure in providing for the distribution of receipts collected from acquired lands. In short, there is nothing in 16 U.S.C. § 715s which requires interpretation of either the term "minerals" or the term "net receipts". Thus, this case cannot be compared with the *American Trucking Associations* case where word "employees" had no fixed and definite meaning.

Furthermore, there is nothing in 16 U.S.C. § 715s which can support two different definitions of the same word or words ("minerals" or "net receipts") as was done by the Courts below.[10]

---

[10] In *Train* v. *Colorado Public Interest Resources Group,* 426 U.S. 1, 48 L. Ed. 2d. 434 (1976) this Court held that the term "pollutant" as used in Federal Water Pollution Control Act, as

Thus considering all the criteria advanced by this Court which might justify a departure from the "plain meaning" rule it is apparent that none applies in this case. As to this case, Chief Justice Marshall's admonition, rendered over a century ago in *United States* v. *Wiltberger*, 5 Wheat. 76, 95-96, 5 L. Ed. 37, 42 (1820), still applies:

> "The intention of the legislature is to be collected from the words they employ. Where there is no ambiguity in the words, there is no room for construction. The case must be a strong one indeed, which would justify a Court in departing from the plain meaning of words, especially in a penal act, in search of an intention which the words themselves did not suggest."

B. The Legislative History of 16 U.S.C. §715s as Amended in 1964, Even if Considered, Does Not Distort the Plain Meaning of the Statute

We have shown in the foregoing portion of our argument that notwithstanding certain exceptions employed by this Court, the application of the "plain meaning" rule is appropriate in interpreting 16 U.S.C. § 715s. Application of that rule requires that the mineral revenue of the Kenai National Moose Range be allocated according to the twenty five percent—seventy five percent formula of the statute.

---

amended in 1972, 86 Stat. 816, did not include radioactive materials which were covered by the Atomic Energy Act. This conclusion was reached because the legislative history of the FWPCA specifically stated that "pollutant" did not include material encompassed in the Atomic Energy Act. Thus *Train* suggests another exception to the "plain meaning rule", based on an explicit legislative history which speaks with force on the question. We will demonstrate in a following portion of our argument that this exception does not apply in this case.

Even if the legislative history of the 1964 amendment is considered, the result is the same. 16 U.S.C. § 715s was first enacted on June 15, 1935, as section 401 of the Act of June 15, 1935, 49 Stat. 383. As first enacted the statute allocated wildlife refuge revenues in a manner similar to that of the present statute, namely twenty five percent thereof to counties and seventy five percent thereof to the United States Treasury. The original statute differed from the current version 16 U.S.C. § 715s in that minerals were not specifically enumerated among those products the revenues from which were to be distributed under the Act.[11] The original system of revenue distribution was possibly altered, in part, by the enactment on August 7, 1947 of the Mineral Leasing Act for Acquired Lands, 61 Stat. 907, 30 U.S.C. § 351 *et seq.* That Act required that mineral revenues from acquired land refuges be allocated as provided in Section 401 of the Act of June 15, 1935; namely, twenty five percent thereof to the counties and seventy five percent to the United States Treasury.

The 1964 amendment to 16 U.S.C. § 715s, Act of August 30, 1964 P.L. 88-523, 78 Stat. 701, by its explicit terms altered the statutory method described above with respect to the distribution of revenue derived from oil and gas leases on reserved land wildlife refuges. Insofar as this litigation is concerned those provisions can be summarized as follows:

1. The word "minerals" was specifically added to the catalog of products, the revenues from the sale of which are to be distributed under 16 U.S.C. § 715s.

---

[11] Nevertheless, on August 5, 1946, Felix S. Cohen, Acting Solicitor, Department of the Interior, concluded that Section 401 of the Act of June 15, 1935 constituted independent authority for granting oil and gas leases on a wildlife refuge, and that revenue therefrom should be distributed pursuant to Section 401 of that Act (A. 68-72).

2. Revenue from reserved land wildlife refuges was specifically made subject to distribution under 16 U.S.C. § 715s(c) (1). Twenty five percent thereof is to be paid to the county in which the refuges is situated.

3. Revenue from acquired land wildlife refuges was specifically made subject to distribution under 16 U.S.C. § 715s(c) (2). In case of an acquired land refuge, twenty five percent of the revenue from the refuge or three fourths of one percent of the cost of the acquisition of the land is to be paid to the county where the land is located.

A review of the legislative history of the 1964 amendments to 16 U.S.C. § 715s discloses that a significant concern of Congress in adopting the amendment was to provide a means for compensating a county whose land might be acquired for a wildlife refuge.[12] However the affected counties were not unaware of the fact that the term "minerals" was added to the list of refuge products to which the amendment would apply.[13] In addition Congress had before it numerous bills from which to choose, some of which omitted any reference to "minerals" [14]

---

[12] See 88th Congress, Second Session, House Report 1753 (R. 590); 88th Congress, Second Session, Senate Report 1096 (R. 614); 88th Congress, Second Session, Hearings on H. R. 1127, H. R. 2393, H. R. 5996, H. R. 9030, H. R. 1008 (R. 649); 88th Congress, Second Session, Hearings on S. 179, S. 1363, S. 1720, S. 2498 (R. 772).

[13] See memorandum dated February 20, 1964 from the Assistant to the Secretary, and legislative counsel to the Secretary of the Interior. In response to a request by the National Association of counties concerning the revenue sharing formula, the legislative counsel stated:

> "Effect: On public lands-none. S. 1363 provides for the payment of 25 per cent of revenue, including timber and *mineral* receipts, as under present law." (R. 588). (Emphasis supplied).

[14] 87th Congress, Second Session: S. 2138, 2678, 2770, 2927, 3201 (R. 423-431); H. R. 12144, 12143, 11535, 11525, 10714 (R. 481-487) 88th Congress, Second Session: S. 1720 (R. 780).

and some of which refered to "minerals."[15] Presumably when Congress adopted the version of the various proposals that contained the term "minerals" it was not unaware of other proposed legislation which omitted that term, nor was it unaware of the significance of the term "minerals", cf. *Shamrock Oil and Gas Corp.* v. *Sheets*, 313 U.S. 100, 106-107, 85 L. Ed. 1214, 1218 (1941). Certainly there is nothing in the legislative history of the amendment which demonstrates a congressional intent different from that exhibited by the words of the statute. Thus, even if this Court chooses to consider the legislative history of the 1964 amendment to 16 U.S.C. § 715s, the conclusion as to the application of that statute to this case cannot differ from the conclusion obtained by application of "plain meaning" rule. The statement of this Court in *Ullman* v. *United States*, 350 U.S. 422, 433, 100 L. Ed. 511, 522 (1956), applies with equal vigor here:

> "The most that can be said for the legislative history is that it is on the whole inconclusive. Certainly, it contains nothing that requires the court to reject the construction which the statutory language so clearly requires."

C. 16 U.S.C. § 715s is Consistent With Congressional Concern Over Wildlife Refuges

Since the enactment of 16 U.S.C. § 715s on June 15, 1935, Congress has shown a consistent concern over the administration of wildlife refuges and the distribution of revenue derived from those refuges. The 1964 amendment to 16 U.S.C. § 715s was the expression of a need to provide a source of revenue for the maintenance and protection of the refuges in light of their increasing com-

---

[15] 88th Congress, Second Session: H. R. 2393, 1004, 1127, 9030, 5996, 11008 (R. 654-659); S. 179, 1363, 2498 (R. 777-782).

mercial use. This need existed irrespective of whether the refuges were on reserved or acquired lands.

As early as 1954 the incompatibility of oil and gas operations and the management of an area as a wildlife refuge was recognized (R. 294). The concern of the Fish and Wildlife Service over oil and gas development on the Kenai National Moose Range resulted in its classification as to areas that would be open and closed to oil development (R. 930-931). In addition, by regulation, the Fish and Wildlife Service was given sole and complete jurisdiction over refuge lands (R. 939), and any lessee was subject to certain stipulations applicable to the land (R. 943-947).

All of this demonstrates that when Congress subjected oil and gas revenue from reserved land refuges to the terms of 16 U.S.C. § 715s, as amended in 1964, it was not operating in ignorance or a vacuum. Oil and gas operations on refuges were then a fact and only permitted under special conditions. In light of the special problems raised by oil and gas operations on wildlife refuges, the need to provide a source of revenue for refuge management and maintenance was apparent. The solution reached by Congress was one clearly consistent with meeting the problems posed by oil and gas operations on refuges. First, seventy five percent of the revenue from both acquired and reserved land refuges would be paid into the Fish and Wildlife Fund. Thus the amount paid into the fund would bear some relation to the extent of industrial development on the refuge. Second, twenty five percent would be paid to the county in which the refuge was located to compensate the county for tax revenue lost because of the public status of the land as well as for services which it must provide incident to the industrial development. In this case the literal interpretation of 16 U.S.C. § 715s is entirely consistent with the Act's objectives. Any other result, and

in particular the result sought by the State of Alaska, is inconsistent with the establishment of a program to provide for the continuing maintenance and management of the wildlife refuge system and for meeting the fiscal needs of the counties in which the system is located,[16]

---

[16] 16 U.S.C. 715s. is not an isolated example of Congress' intent to legislate specifically with respect to wildlife refuges and wildlife management. See for example:

1. Game Laws of May 25, 1900, 31 Stat. 187, 16 U.S.C. 701. See also 18 U.S.C. 41, et seq.

2. Game Birds' Eggs Act of June 3, 1902, 32 Stat. 285, 16 U.S.C. 702.

3. Migratory Birds Act of March 4, 1913, 37 Stat. 847, 16 U.S.C. 673.

4. Kansas Game Preserve Act of June 22, 1916, 39 Stat. 233, and March 10, 1928, 45 Stat. 300.

5. Migratory Birds Treaty Act of July 3, 1918, 40 Stat. 755, 16 U.S.C. 703-711.

6. Migratory Birds Protection Proclamation of July 31, 1918, 40 Stat. 1812.

7. Ozark National Forest Game Refuge Act of February 28, 1925, 43 Stat. 1091, 16 U.S.C. 682.

8. Ozark National Game Refuge Proclamation, April 26, 1926, 44 Stat. 2611.

9. The Upper Mississippi Wild Life and Fish Refuge Act of June 7, 1924, 43 Stat. 650, 16 U.S.C. 721 *et seq.*

10. Fish Conservation Act of May 1, 1928, 45 Stat. 478.

11. Fish and Game Preserve Act (Idaho), December 15, 1928, 45 Stat. 1022.

12. Fish Culture Act, January 29, 1929, 45 Stat. 1142.

13. Migratory Bird Conservation Act of February 18, 1929, 45 Stat. 1222, 16 U.S.C. 715-715r.

14. Migratory Bird Conservation Act of March 16, 1934, 48 Stat. 452, 16 U.S.C. 718-718H.

15. Wildlife Conservation Act of May 19, 1948, 62 Stat. 240, 16 U.S.C. 667 B-667d.

cf. *Kokoszka* v. *Bellford*, 417 U.S. 642, 650, 41 L. Ed. 2d., 374-381 (1974).

D. 16 U.S.C. § 715s as Amended in 1964 Impliedly Repealed Those Inconsistent Provisions of 30 U.S.C. § 191, the Mineral Leasing Act of 1920

We have shown in the foregoing portion of our argument that insofar as they relate to distribution of oil and gas revenues derived from reserved land wildlife refuges, the Mineral Leasing Act of 1920 and the Wildlife Refuge Revenue Sharing Act, as amended in 1964, are in irreconcilable conflict. It must of necessity follow that to the extent the terms of 30 U.S.C. § 191 are repugnant to 16 U.S.C. § 715s, as amended in 1964, the later statute, 16 U.S.C. § 715s, prevails, and is substituted for the repugnant provisions of 30 U.S.C. § 191, *District of Columbia* v. *Hutton*, 143 U.S. 18, 26-27, 36 L. Ed. 60, 62 (1892); *United States* v. *Henderson*, 11 Wall. 652, 657, 20 L. Ed. 235, 237, (1871). Similarly, where the later act embraces new provisions, not contained in the earlier act, the later act will operate as a repeal of the earlier, *District of Columbia* v. *Hutton*, *supra*. Clearly these rules apply in this case. Even though the Mineral Leasing Act of 1920 covers in general terms distributions of revenue from Federal lands, the later Wildlife Refuge Revenue Sharing Act, as amended in 1964, embraces new provisions which apply with particularity to wildlife refuges, both reserved and acquired. To that extent, the later act must constitute a repeal of the earlier. The conclusion must follow that, notwithstand-

---

16. Fish Restoration and Management Projects Act of August 9, 1950, 64 Stat. 430, 16 U.S.C. 777 *et seq.*

17. Migratory Birds Conservation Act of July 30, 1956, 70 Stat. 722, 16 U.S.C. 718a *et seq.*

18. Fish and Wildlife Act of August 8, 1956, 70 Stat. 1119, 16 U.S.C. 742a *et seq.*

ing the provisions of 30 U.S.C. § 181 et seq., the later and inconsistent provisions of 16 U.S.C. § 715s must govern the allocation of the revenues from the Kenai National Moose Range.

III

THE OPINIONS OF THE SOLICITOR OF THE DEPARTMENT OF THE INTERIOR AND OF THE COMPTROLLER GENERAL ARE ENTITLED TO GREAT WEIGHT

In an early part of our argument we have shown that 16 U.S.C. § 715s is clear and unambiguous. Hence we have shown that this Court should interpret this statute according to its "plain meaning". We have also shown that even if the legislative history of the statute is considered, the inconclusiveness of that history requires the same result. Lastly, this Court may consider the rulings and opinions of the Solicitor of the Department of the Interior and Comptroller General earlier referred to, even though such consideration is not necessary due to the fact that the statute is unambiguous, *Shea* v. *Vialpando*, 416 U.S. 251, 262, 40 L. Ed. 2d. 120, 130, (1974). Nevertheless, if this Court entertains any doubt as to the interpretation of 16 U.S.C. § 715s, as amended in 1964, irrespective of its plain meaning, the rulings and opinions of the Solicitor of the Department of the Interior and of the Comptroller General constitute informed judgments to which the Court may look for guidance, *Maritime Board* v. *Isbrandtsen Co.*, 356 U.S. 481, 499, 2 L. Ed. 2d. 926, 938, (1958). Once considered, those opinions should not be overruled except for weighty reasons, *United States* v. *Atlantic Refining Co.*, 360 U.S. 19, 24, 3 L. Ed. 2d. 1054, 1057, (1959).

In this case both the Solicitor of the Department of the Interior and the Comptroller General in well reasoned

opinions interpreted 16 U.S.C. § 715s, as amended in 1964, so as to require distributions from reserved land refuges, including the Kenai National Moose Range according to its terms. Those opinions, so considered, are consistent with the plain meaning of the Statute.

CONCLUSION

Based on the foregoing, the Judgment of the Court of Appeals for the Ninth Circuit should be reversed and the matter remanded to the District Court with instructions to grant the Motion of the Kenai Peninsula Borough for partial summary judgment.

DATED this 19 day of November, 1980, at Anchorage, Alaska.

CRANSTON, WALTERS & DAHL
Attorneys for Kenai Peninsula Borough

By: /s/ Charles K. Cranston
CHARLES K. CRANSTON

No. 79-1904

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

KENAI PENINSULA BOROUGH,
Petitioner

v.

STATE OF ALASKA, *et al.*,
Respondents

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

REPLY BRIEF OF KENAI PENINSULA BOROUGH

CHARLES K. CRANSTON
Attorney of Record
CRANSTON, WALTERS & DAHL
310 K Street, Suite 407
Anchorage, Alaska 99501
(907) 276-1994

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTION PRESENTED FOR REVIEW

Are revenues derived from federal oil and gas leases covering the Kenai National Moose Range, Alaska (a reserved land Federal Wildlife Refuge) to be distributed pursuant to 16 U.S.C. § 715s (The Wildlife Refuge Revenue Sharing Act), which allocates 25 per cent of such revenue to the county in which the refuge is located (The Kenai Peninsula Borough) and 75 per cent to the Federal Government for management of the wildlife refuge systems; or, are such revenues to be distributed pursuant to 30 U.S.C. § 191, (The Mineral Leasing Act of 1920), which allocates 90 per cent of such revenues to the State of Alaska and 10 per cent to the United States Treasury? *

---

* Additional parties involved are: Cecil D. Andrus, Secretary of the Interior, D. William Miller, Secretary of the Treasury and the Comptroller General of the United States, all of whom are petitioners in 79-1980 which has been consolidated with this case.

MOTION FOR LEAVE TO FILE REPLY BRIEF

Pursuant to Supreme Court Rule 35.3 Kenai Peninsula Borough moves this Court for leave to abridge the time for filing its Reply Brief.

Argument in this matter is set for January 13, 1981. The brief of Appellees, State of Alaska, was received by counsel for Kenai Peninsula Borough January 2, 1981. Because of the limited time available, it is impossible for Kenai Peninsula Borough to place its Reply Brief in the hands of the printer in a time sufficient for filing of the brief within the time required under rule 35.3.

For the reasons stated leave is requested for an order abridging the time for filing the Reply Brief.

DATED this 9th day of January, 1981 at Anchorage, Alaska.

CRANSTON, WALTERS & DAHL
Attorneys for
Kenai Peninsula Borough

By: /s/ Charles K. Cranston
CHARLES K. CRANSTON

TABLE OF CONTENTS

	Page
QUESTION PRESENTED FOR REVIEW	(i)
MOTION FOR LEAVE TO FILE REPLY BRIEF	ii
TABLE OF AUTHORITIES	iv
STATEMENT OF THE CASE	1
A. Proceedings in Court Below	1
B. Statement of Facts	3
ARGUMENT	6
1. ALASKA MISINTERPRETS THE "PLAIN MEANING" OF THE WILDLIFE REFUGE REVENUE SHARING ACT, 16 U.S.C. § 715s	6
2. THE LEGISLATIVE HISTORY OF THE 1964 AMENDMENT TO 16 U.S.C. § 715s DOES NOT SPEAK, ONE WAY OR THE OTHER TO THE ISSUE OF IMPLIED REPEAL	7
3. PAST ADMINISTRATIVE PRACTICE PROVIDES NO STANDARD BY WHICH TO INTERPRET 16 U.S.C. § 715s	8
4. THE POSSIBILITY THAT THE EXECUTIVE BRANCH MAY DRAW PUBLIC LANDS FOR WILDLIFE REFUGES CANNOT AFFECT THE INTERPRETATION OF 16 U.S.C. § 715s	8
5. THERE IS NO CONFLICT BETWEEN 16 U.S.C. § 715s AND THE ALASKA STATEHOOD ACT	9
CONCLUSION	10

TABLE OF AUTHORITIES

CASES Page

Udall v. *Tallman*, 380 U.S. 1 (1965) 3, 8
United States v. *Wiltberger*, 5 Wheat. 76, 95-96, 5 L. Ed. 37, 42 (1820) 7
Enfield v. *Kleppe*, 556 F. 2d 1139 (10th Cir. 1977) .. 8

STATUTES

16 U.S.C. § 715s 1, 2, 3, 4, 5, 6, 7, 8, 9, 10
16 U.S.C. § 715s (g) 2 3
16 U.S.C. § 715s (g) 3 3
30 U.S.C. § 181 ..... 2, 4, 6, 7, 9
30 U.S.C. § 191 ..... 6, 7, 9
30 U.S.C. § 352 6
Alaska Statehood Act of 1958, Pub. L. No. 85-508, 72 Stat. 339 9

LEGISLATIVE HISTORY

27th Congress, 2d Session 7
88th Congress, 2d Session 7

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No. 79-1904

KENAI PENINSULA BOROUGH,
Petitioner

v.

STATE OF ALASKA, *et al.*,
Respondents

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

REPLY BRIEF OF KENAI PENINSULA BOROUGH

STATEMENT OF THE CASE

A. Proceedings in Court Below

This case involves consolidated suits by the Kenai Peninsula Borough, an Alaska county type municipal corporation (hereinafter "Kenai"), and the State of Alaska (hereinafter "Alaska") against the Secretary of the Interior and other Federal officials for declaratory relief and writs of mandate (R. 1; 14). Kenai sought a declaratory judgment that revenue derived from Federal oil and gas leases covering the Kenai National Moose Range, a reserved land national wildlife refuge, be allocated pursuant to 16 U.S.C. § 715s (The Wildlife Refuge

Revenue Sharing Act). Under that section Kenai would receive 25 per cent (25%) of such net revenue, the remaining 75 per cent (75%) would be paid to the United States Treasury to be expended for the management of the National Wildlife Refuge System.

Alaska sought a declaratory judgment that such revenue be distributed pursuant to 30 U.S.C. §§ 181, et seq., the Mineral Leasing Act of 1920 (R. 14). Under that act 90 per cent (90%) of the revenue would be distributed to the State and 10 per cent (10%) to the United States. Both Kenai and Alaska sought writs of mandate compelling the appropriate federal officials to distribute the revenue in a manner consistent with their respective statutory claims. In each suit the Secretary of the Interior sought a judgment declaring that the involved revenues be allocated pursuant to 16 U.S.C. § 715s. (R. 29).

The two separate actions were consolidated (R. 10) and after consolidation Kenai intervened in Alaska's suit and sought the same relief as in its original suit. (R. 38).

Ultimately all of the parties, Kenai, Alaska and the Federal defendants, filed motions for partial summary judgment. After briefing and oral argument, the United States District Court granted Alaska's motion for partial summary judgment.[1] Pursuant to that ruling judgment was entered in favor of Alaska on October 10, 1977. That judgment declared that the involved revenue be allocated between Alaska and the United States pursuant to 30 U.S.C. §§ 181 et seq.

The Federal defendants and Kenai appealed the District Court Judgment to the Court of Appeals for the

---

[1] The motions were for partial summary judgment only on the issue of which statutory method of allocation applied to the revenues in questions. Other issues concerning the reallocation of revenues already distributed were not involved.

Ninth Circuit. By its judgment of February 5, 1980 the Court of Appeals affirmed the judgment of the District Court. (Kenai's Petition for Writ of Certiorari, Appendix B-2).

B. Statement of Facts

This dispute centers on the meaning of 16 U.S.C. § 715s, as amended on August 30, 1964 by Pub. Law 88-523, 78 Stat. 701-702. The 1964 amendment to 16 U.S.C. § 715s was a revision of a Wildlife Refuge Revenue Sharing Act. As first enacted on June 15, 1935, 49 Stat. 383, the Act distributed seventy five per cent of the net revenue derived from the sale of certain products of wildlife refuges to the county in which the refuge was located. The United States retained the remainder of the revenue. Proceeds from the sales of minerals were not specifically designated for distribution under the 1935 formula.

The 1964 amendment to 16 U.S.C. § 715s added the word "minerals" to the list of resources the revenue from which was to be distributed to counties under the Wildlife Revenue Sharing Act. In addition the 1964 amendment to 16 U.S.C. § 715s distinguished between revenue derived from reserved [2] land refuges and that derived from acquired [3] land refuges.

The Kenai National Moose Range is a reserved land wildlife refuge located wholly within the Kenai Peninsula Borough, Alaska. It was established on December 16, 1941, Executive Order 8979, 6 Fed. Reg. 6471 (R. 906). The refuge comprises of approximately 2 million acres, see *Udall* v. *Tallman*, 380 U.S. 1 (1965). Since 1959

---

[2] Reserved land means an area withdrawn from the public domain and reserved as a Wildlife Refuge, 16 U.S.C. § 715s (g) (3), as amended in 1976.

[3] Acquired land means land which is acquired in fee by the United States and then administered as a Wildlife Refuge, 16 U.S.C. § 715s (g) (2), as amended in 1976.

revenue has been derived from Federal oil and gas leases on the Kenai National Moose Range. (R. 66-67; 229-230). From 1959 through 1976 approximately ninety per cent of that revenue was distributed to the State of Alaska and ten per cent to the United States (R. 230). These distributions have totaled approximately $57,239,586.03 (R. 949). Since 1976 the oil and gas lease revenues from the Kenai National Moose Range have been and are being held in a suspense account pending the resolution of this dispute (R. 231, 1133).

In 1975 the Director of the United States Fish and Wildlife Service requested an opinion from the Solicitor of the Department of the Interior as to whether the 1964 amendment to 16 U.S.C. § 715s required that receipts from oil and gas leases on reserved land wildlife refuges be distributed pursuant to 16 U.S.C. § 715s or whether they be distributed pursuant to 30 U.S.C. §§ 181 et seq., the Mineral Leasing Act. The Solicitor concluded that oil and gas revenues must be distributed in accordance with the 1964 amendments to § 715s irrespective of whether the refuge involved was a reserved land or acquired land refuge (Opinion, Solicitor Department of the Interior, Appendix D, Petition of Cecil D. Andrus et al., for Writ of Certiorari.)

The Solicitor for the Department of the Interior requested the Comptroller General for an opinion as to whether he concurred in the solicitor's opinion referred to above. In opinion B-118678, dated July 29, 1975, (Appendix E, Petition of Cecil D. Andrus, et al., for Writ of Certiorari), the Comptroller General concluded:

> ". . . that Congress intended the disposition of receipts from minerals on wildlife refuges to be governed by 16 U.S.C. § 715s as amended. We note that to hold otherwise as the Solicitor's memorandum points out would be to deprive § 715s (c) (1) of Title 16, prescribing a specific scheme of distribution for

> revenues from refuges created by reservation, of any meaning."

The State of Alaska, through its then Attorney General, sought a modification of the Comptroller General's opinion to reflect the States' position that oil and gas revenues from wildlife refuges on reserved lands be distributed according to the Mineral Leasing Act and not 16 U.S.C. § 715s (R. 190-197).

On June 11, 1976 the Comptroller General, upon reconsideration, affirmed his earlier decision (R. 211-221; Appendix F, Petition of Cecil D. Andrus et al for Writ of Certiorari). In his decision on reconsideration the Comptroller General stated in part:

> "the language of § 715s, as amended, compels a different conclusion [from that of Alaska]. It adds revenues from minerals to the fund established by subsection (a), and provides for distribution of net receipts in the fund, according to the formulas described in subsections (c)(1) and (c)(2), both to counties in which acquired refuges are situated and to those which reserved refuges are situated. There is no way to read this provision as excepting oil and gas revenues from the fund, but only to the extent they derive from refuges on reserved land, without doing violence to the plain meaning of the statute."

In addition the Comptroller General considered the arguments of Alaska that the Alaska Native Claims Settlement Act, 43 U.S.C. §§ 1601-1624, compelled distribution pursuant to the Mineral Leasing Act. He found these arguments unpersuasive.

Since the parties were unable to agree upon a resolution of this dispute these suits followed.

ARGUMENT

1. ALASKA MISINTERPRETS THE "PLAIN MEANING" OF THE WILDIFE REFUGE REVENUE SHARING ACT, 16 U.S.C. §715s.

In a classic example of putting the cart before the horse, Alaska argues that this Court should apply the plain meaning of 30 U.S.C. §§ 181 and 191 to the facts of this case so as to achieve the result it advocates. It seeks to accomplish this by disregarding the mandate of 16 U.S.C. § 715s on the basis that the word "minerals" as used in that statute does not include oil and gas and therefore presumably cannot apply to the Kenai National Moose Range Revenues. Alaska's argument disregards numerous judicial decisions which include oil and gas within the term "minerals" (See cases cited at footnote 6, page 20, Kenai Opening Brief). In addition, Alaska disregards those statutes upon which it relies. Specifically, 30 U.S.C. § 181, part of the Mineral Leasing Act of 1920, includes oil and gas among the minerals to which it pertains. Likewise when Congress used the term "minerals" in the Mineral Leasing Act for Acquired Lands, it included oil and gas among those minerals covered, 30 U.S.C. § 352. For Alaska to argue that the term "minerals" in 16 U.S.C. § 715s does not include oil and gas is to disregard Congress' universal understanding of the term as shown in related legislation. Moreover, Alaska's argument that the plain meaning of 30 U.S.C. §§ 181 and 191 requires the application of those statutes to oil and gas revenues from Wildlife Refuges makes no sense if instead of oil and gas revenue another mineral, such as coal, were involved. Would Alaska then, by piecemeal, emasculate the term "minerals" in 16 U.S.C. § 715s by deleting coal, phosphate, sodium or any other mineral identified in 30 U.S.C. § 181 from the term minerals as used in 16 U.S.C. § 715s? Presumably Alaska would seek this result in order to achieve the application of the Min-

eral Leasing Act rather than the Wildlife Refuge Sharing Act. Carefully considered, Alaska is arguing that the term "minerals" in 16 U.S.C. § 715s includes every mineral except those enumerated in 30 U.S.C. § 181. Such an interpretation distorts the "plain meaning" rule beyond recognition and subjects Congress to an intent that can exist, if at all, only in the imagination of Alaska's attorneys.

2. THE LEGISLATIVE HISTORY OF THE 1964 AMENDMENT TO 16 U.S.C. § 715s DOES NOT SPEAK, ONE WAY OR THE OTHER TO THE ISSUE OF IMPLIED REPEAL.

There is no ambiguity in 16 U.S.C. § 715s as amended in 1964. Hence there is no room for construction of its terms, cf. *United States* v. *Wiltberger*, 5 Wheat. 76, 95-96, 5 L. Ed. 37, 42 (1820). Despite such lack of ambiguity, Alaska nevertheless resorts to legislative history in an attempt to show that Congress did not intend to repeal, by implication, the irreconcilable provisions of 30 U.S.C. §§ 181 and 191. Alaska relies almost solely on a table and its explanation [4] showing that no increase in revenues to Kenai was expected if the legislation were enacted. There is no basis shown for the projections in the table. The clearest explanation for the projections in the table is simply that they were erroneous. Indeed, Alaska admits that revenue projections of witnesses at the hearings before the 88th Congress, 2d Sess. were wrong (Alaska Brief p. 21 fn. 39) Congressional reliance upon erroneous projections by witnesses cannot be elevated to show a congressional intent to distort the plain meaning of its statutes so as to conform the statute to the erroneous testimony.

The bankruptcy of Alaska's argument on this point is shown by its interpretation of the term "minerals" in

---

[4] S. Rep. No. 1919, pp. 4-10, 27th Congress, 2d. Session.

16 U.S.C. § 715s so as to include oil and gas if the refuge receipts are from acquired lands but not to include oil and gas if the refuge receipts are from reserved lands (Alaska Brief pp. 22-23). No reading of the statute can justify such a conclusion.

3. PAST ADMINISTRATIVE PRACTICE PROVIDES NO STANDARD BY WHICH TO INTERPRET 16 U.S.C. § 715s.

There is no dispute that the Department of the Interior distributed money from the Kenai National Moose Range, under the Mineral Leasing Act formula during the period prior to 1976. That fact cannot modify the clear language of 16 U.S.C. § 715s requiring a different allocation of revenue. Past administrative practice is useful in interpreting statutes or regulations where there is no ambiguity or unclarity, cf. *Udall* v. *Tallman*, 380 U.S. 1 (1965). However, in the case of the statute whose meaning is clear and direct administrative practice which is contrary to the direction of the statute is of no significance, *Enfield* v. *Kleppe*, 556 F. 2d 1139 (10th Cir. 1977).

Under these facts the administrative error must be, and indeed can be corrected. In this regard see argument and cases cited at pages 31-32 of the brief of the Federal Petitioners.

4. THE POSSIBILITY THAT THE EXECUTIVE BRANCH MAY WITHDRAW PUBLIC LANDS FOR WILDLIFE REFUGES CANNOT AFFECT THE INTERPRETATION OF 16 U.S.C. § 715s.

Alaska raises the spector that the intent of Congress to share mineral revenue with the states in areas not included within wildlife refuges can be frustrated by the executive withdrawal of public lands for wildlife refuges. The simple answer to this argument is that such after the fact events, if they do occur, cannot affect

the meaning of what Congress enacted in 1964. Beyond that, if Congress does perceive abuses of the Executive part to withdraw land for wildlife refuges purposes, it may remedy such abuses by legislation.

In reality, Alaska's argument on this point requires no response since it is speculative. Alaska does not point out any instance of the abuse it perceives even though 16 years have gone by since the enactment of the legislation herein involved. For this reason the argument should be regarded as specious and be disregarded.

5. THERE IS NO CONFLICT BETWEEN 16 U.S.C. § 715s AND THE ALASKA STATEHOOD ACT.

Contrary to Alaska's assertion, the Alaska Statehood Act does not require that all minerals disposed of by the United States from Alaska be distributed under 30 U.S.C. §§ 181, 191. What the Statehood Act does provide is that where the Mineral Leasing Act applies to any disposition of minerals, the State shall receive 90 per cent of the revenues received. § 28(b) of the Alaska Statehood Act, 72 Stat. 339, reads in part:

> [30 U.S.C. § 191] is hereby amended by inserting immediately before the colon preceding the first proviso thereof the following: ', and of those from Alaska 52 and ½ percent thereof shall be paid to the State of Alaska for disposition by the legislature.' "

Without that language Alaska's 52 and ½ per cent share would have otherwise been paid into the reclamation fund, a fund whose proceeds would not pass to Alaska. This is far different from stating that all minerals dispositions from Alaska be made pursuant to 30 U.S.C. § 191.

The interpretation of 16 U.S.C. § 715s advocated by the federal petitioners and the Kenai Peninsula Borough

will not result in the impoverishment of Alaska as suggested by the State at pages 29 through 30 of its brief. Indeed, even without the revenues of the Kenai National Moose Range, Alaska has recently enacted legislation repealing its personal income tax, § 9, Chapter 2, Special Sess., Statutes of Alaska 1980; § 10, Chapter 1, Special Sess., Laws of Alaska 1980, and enacted a permanent fund dividend. This simply shows that the amendment to the Mineral Leasing Act required by Section 28 (b) of the Alaska Statehood Act has accomplished Congress' intent with respect to providing a sound economic base for Alaska. This result has been achieved even when 16 U.S.C. § 715s has been interpreted so as to require distribution of Moose Range Revenues pursuant to its plain meaning.

CONCLUSION

Based on the foregoing argument as well as the argument in the opening brief of Kenai Peninsula Borough, the judgment of the Court of Appeals for the Ninth Circuit should be reversed and the matter remanded to the District Court with instructions to grant the motion of the Kenai Peninsula Borough for partial summary judgment.

DATED this 9th day of January, 1981, at Anchorage, Alaska.

CRANSTON, WALTERS & DAHL
Attorneys for
Kenai Peninsula Borough

By: /s/ Charles K. Cranston
CHARLES K. CRANSTON

see 79

1890